

the Department of the Interior for the fiscal year ending June 30, 1923, to reimburse the Territory of Alaska for moneys advanced to the Governor of Alaska for repairs to his residence at Juneau, Alaska, necessitated by fire in the building, amounting to \$857 (H. Doc. No. 588); to the Committee on Appropriations and ordered to be printed.

1007. A communication from the President of the United States, transmitting supplemental estimate of appropriation for the Alien Property Custodian for the fiscal year ending June 30, 1923, \$8,324.93 (H. Doc. No. 589); to the Committee on Appropriations and ordered to be printed.

1008. A communication from the President of the United States, transmitting an estimate of appropriation for the Supreme Court of the United States for the fiscal year ending June 30, 1923, for a marble bust, with pedestal, and for an oil portrait of the late Chief Justice Edward Douglass White (H. Doc. No. 590); to the Committee on Appropriations and ordered to be printed.

1009. A communication from the President of the United States, transmitting supplemental estimates of appropriations for the Treasury Department for the fiscal year ending June 30, 1923, amounting to \$78,838,515.95 (H. Doc. No. 591); to the Committee on Appropriations and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII.

Mr. VOLSTEAD: Committee on the Judiciary. H. R. 14337. A bill to incorporate the Belleau Wood Memorial Association; with an amendment (Rept. No. 1624). Referred to the House Calendar.

Mr. DOMINICK: Committee on the Judiciary. H. R. 7851. A bill to amend an act entitled "An act to amend an act entitled 'An act to provide for the appointment of a district judge, district attorney, and marshal for the western district of South Carolina, and for other purposes,'" approved September 1, 1916, so as to provide for the terms of the district court to be held at Spartanburg, S. C.; with an amendment (Rept. No. 1625). Referred to the House Calendar.

Mr. BOIES: Committee on the Judiciary. S. 3892. An act authorizing the State of California to bring suit against the United States to determine title to certain lands in Siskiyou County, Calif.; without amendment (Rept. No. 1626). Referred to the Committee of the Whole House on the state of the Union.

Mr. HERSEY: Committee on the Judiciary. H. R. 14226. A bill to amend an act entitled "An act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes," approved September 7, 1916; with an amendment (Rept. No. 1627). Referred to the Committee of the Whole House on the state of the Union.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. FOCHT: A bill (H. R. 14361) to authorize and direct the Commissioners of the District of Columbia to erect a building for the care of tubercular pupils; to the Committee on the District of Columbia.

By Mr. NEWTON of Minnesota: A bill (H. R. 14362) to amend subdivision (II) of section 20 of the interstate commerce act as amended; to the Committee on Interstate and Foreign Commerce.

By Mrs. HUCK: A joint resolution (H. J. Res. 450) announcing that the Congress of the United States shall make no concessions to any country that does not refer the question of war to its people; to the Committee on Foreign Affairs.

By Mr. PORTER: A joint resolution (H. J. Res. 451) requesting the President to urge upon the governments of certain nations the immediate necessity of limiting the production of habit-forming narcotic drugs and the raw materials from which they are made to the amount actually required for strictly medicinal and scientific purposes; to the Committee on Foreign Affairs.

By Mrs. HUCK: A concurrent resolution (H. Con. Res. 85) declaring the people of the Philippine Islands to be free and independent; to the Committee on Insular Affairs.

By Mr. FOCHT: A resolution (H. Res. 534) for the immediate consideration of Senate bill 3136, the teachers' pay bill; to the Committee on Rules.

By Mr. SUMMERS of Washington: A resolution (H. Res. 535) for the immediate consideration of Senate bill 3808; to the Committee on Rules.

By Mr. BRIGGS: Memorial of the Legislature of the State of Texas urging immediate recognition of the Obregon government in Mexico; to the Committee on Foreign Affairs.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. GILLETT: A bill (H. R. 14363) for the relief of Charles A. Eastman; to the Committee on Indian Affairs.

By Mr. HICKS: A bill (H. R. 14364) for the relief of Charles Beck; to the Committee on Claims.

By Mr. J. M. NELSON: A bill (H. R. 14365) granting an increase of pension to Aurora C. B. Kinney; to the Committee on Invalid Pensions.

By Mr. SNELL: A bill (H. R. 14366) granting a pension to Julia Conger; to the Committee on Invalid Pensions.

By Mr. TINCHER: A bill (H. R. 14367) granting a pension to Visa A. Moser Elliott; to the Committee on Invalid Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7322. By the SPEAKER (by request): Petition of Women's International League for Peace and Freedom, Massachusetts branch, Boston, Mass., urging repeal of the espionage act; to the Committee on the Judiciary.

7323. By Mr. BRIGGS: Letter of Mr. R. C. Spinks, Crockett, Tex., urging passage of truth in fabric bill and other legislative relief; to the Committee on Interstate and Foreign Commerce.

7324. By Mr. KISSEL: Petition of chairman New York League of Women Voters, urging passage of House bill 11490 transferring work of Interdepartmental Social Hygiene Bureau to the Department of Justice; to the Committee on the Judiciary.

7325. Also, petition of Kings County Republican Committee, favoring a child labor amendment to United States Constitution; to the Committee on the Judiciary.

7326. Also, petition of Maritime Association of the Port of New York, favoring passage of a bill providing for Government ownership and operation of Cape Cod Canal; to the Committee on Interstate and Foreign Commerce.

7327. By Mr. RAINEY of Illinois: Petition of Eaton Priddy Post, No. 111, of the American Legion, favoring an appropriation for the development and promotion of the Organized Reserves and the citizens' military training camps; to the Committee on Appropriations.

SENATE.

SATURDAY, February 17, 1923.

The Senate met at 11 o'clock a. m.

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

Our Father who art in heaven, hallowed be Thy name. Thy kingdom come. Grant that we each may have a part in bringing in that kingdom until the kingdoms of this world shall become the kingdom of our Lord, Jesus Christ. Enable us in all our duties to find an earnest of Thee in the understanding of the times and in our desire to fulfill Thy will. Through Jesus Christ. Amen.

The reading clerk proceeded to read the Journal of the proceedings of the legislative day of Tuesday, February 13, 1923, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

CALL OF THE ROLL.

Mr. McKELLAR. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The reading clerk called the roll, and the following Senators answered to their names:

Ashurst	Curtis	Harrison	McCormick
Ball	Dial	Heffin	McCumber
Bayard	Dillingham	Hitchcock	McKellar
Brookhart	Ernst	Johnson	McKinley
Bursum	Fernald	Jones, Wash.	McLean
Calder	Fletcher	Kellogg	McNary
Cameron	Frelinghuysen	Keyes	Moses
Capper	George	King	Nelson
Caraway	Gerry	Ladd	New
Colt	Glass	La Follette	Norris
Couzens	Hale	Lenroot	Oddie
Culberson	Harris	Lodge	Overman

Owen	Robinson	Sutherland	Warren
Page	Sheppard	Swanson	Watson
Phipps	Shields	Townsend	Weller
Pittman	Smith	Trammell	Willis
Pomerene	Smoot	Underwood	
Ransdell	Spencer	Walsh, Mass.	
Reed, Pa.	Sterling	Walsh, Mont.	

The VICE PRESIDENT. Seventy-three Senators have answered to their names. A quorum is present.

PETITIONS AND MEMORIALS.

The VICE PRESIDENT laid before the Senate resolutions adopted by citizens of Stoughton, Mass., in town meeting assembled, favoring the passage of legislation creating an agency of the Federal Government authorized to fix maximum prices for coal, providing that in the sale and shipment of coal at the mines or elsewhere orders from consumers, and dealers selling directly to consumers, shall take precedence over all other orders, and to provide for the prompt transportation of such shipments, which were referred to the Committee on Education and Labor.

Mr. ROBINSON presented a letter in the nature of a memorial from W. T. Sherman, of Eldorado, Ark., chosen a committee of one by the Eldorado (Ark.) Central Labor Union, to transmit resolutions passed by that union protesting against the passage of the so-called ship subsidy bill, which was ordered to lie on the table.

Mr. WARREN presented a resolution unanimously adopted by the convention of the National Association of Woolen and Worsted Overseers at Boston, Mass., favoring the passage of legislation establishing greater uniformity in the hours of labor in the textile industries of the United States, which was referred to the Committee on Education and Labor.

Mr. STERLING presented petitions of sundry citizens of Parkston, Dimock, Armour, Garretson, Menno, Freeman, and Clayton, all in the State of South Dakota, praying for the passage of legislation granting immediate aid to the famine-stricken peoples of the German and Austrian Republics, which were referred to the Committee on Appropriations.

He also presented the following concurrent resolution of the Legislature of South Dakota, which was referred to the Committee on Commerce:

A concurrent resolution.

Whereas South Dakota is almost wholly dependent upon agriculture, and consequently the market for agricultural products is of prime importance in our affairs; and

Whereas water transportation will reduce the cost of the carriage of wheat to the seaboard no less than 7 cents per bushel and proportionately upon other cereals, a saving that would add many millions to the market value of the products of our farms, to say nothing of the reduced cost of merchandise by reason of bringing the seaboard to the interior; and

Whereas the proposed Great Lakes-St. Lawrence deep waterway will bring South Dakota 2,000 miles nearer to the Atlantic and European markets and will result in substantial advantage to our markets and the consequent improvement to agricultural conditions and the general prosperity of the people: Therefore be it

Resolved by the Senate of the State of South Dakota (the House of Representatives concurring), That the Congress of the United States be, and it hereby is, memorialized and petitioned to promptly take such action as will result in immediate development of the Great Lakes-St. Lawrence deep waterway: Be it further

Resolved, That engrossed copies of this resolution be forwarded by the secretary of state to our Senators and Representatives in Congress and to the Secretary of the Senate and Chief Clerk of the House of Representatives of the United States, and to His Excellency the President of the United States, Warren G. Harding.

CARL GUNDERSON,
President of the Senate.
A. B. BLAKE,
Secretary of the Senate.
E. O. FRESCOLN,
Speaker of the House.
WRIGHT TARBELL,
Chief Clerk of the House.

Mr. STERLING presented the following concurrent resolution of the Legislature of South Dakota, which was referred to the Committee on the Judiciary:

A concurrent resolution.

Be it resolved by the Senate of the State of South Dakota (the House of Representatives concurring), That—

Whereas a resolution introduced by Hon. W. R. GREEN, of Iowa, for the submission of an amendment to the Constitution of the United States eliminating the exemption from taxation of National, State, and municipal securities has passed the National House of Representatives; and

Whereas such exemption has provided an avenue of escape from taxation of billions of dollars invested in such securities, thus increasing to an unwarranted degree the burdens imposed upon other classes of property; and

Whereas if this plan of exemption from taxation is to be continued the burden of taxation will fall most heavily upon the productive capital and will relieve nonproductive capital from its fair share of taxation: Now, therefore, be it

Resolved, That it is the sense of the Legislature of the State of South Dakota that provision should be made against the further continuance of this form of tax exemption and that said resolution should be adopted and an amendment should be made to the Constitution of the United States as proposed in said resolution; be it further

Resolved, That engrossed copies of this resolution be forwarded to the President of the United States and to the Hon. THOMAS STERLING and to the Hon. PETER NORBECK, Senators of the State of South Dakota.

CARL GUNDERSON,
President of the Senate.
A. B. BLAKE,
Secretary of the Senate.
E. O. FRESCOLN,
Speaker of the House.
WRIGHT TARBELL,
Chief Clerk of the House.

Mr. McCUMBER presented a petition, numerously signed by sundry citizens of the State of North Dakota, praying for the prompt passage of legislation stabilizing the prices of farm products to a level more nearly equal to the prices farmers have to pay for articles purchased, which was referred to the Committee on Agriculture and Forestry.

He also presented the following concurrent resolution of the Legislature of North Dakota, which was referred to the Committee on Commerce:

Senate concurrent resolution.

GREAT LAKES-ST. LAWRENCE WATERWAY PROJECT.

Be it resolved by the Senate of the State of North Dakota (the House of Representatives concurring therein)—

Whereas the great and natural resources of the State of North Dakota are as yet undeveloped, and said State is dependent upon agriculture for its prosperity, and agriculture being the fundamental basis for prosperity in all Northwest States; and

Whereas in a large measure, if not entirely, the price of agricultural products is dependent upon foreign markets; and

Whereas the present rates for transportation of such products are too high to be in just proportion to the price received therefor at terminal markets, and thus has a tendency to curtail the production of the staple articles of agriculture needed by all people in all lands; and

Whereas the Great Lakes-St. Lawrence waterway project, if completed and perfected, will furnish to the people of the State of North Dakota a cheaper method of transportation of their products to foreign markets, thus assuring them a higher revenue for the same: Now, therefore, be it

Resolved by the Senate of the Eighteenth Legislative Assembly of the State of North Dakota (the House of Representatives concurring therein), That we do hereby memorialize the Congress of the United States and respectfully urge that Congress take immediate action toward the passage of such laws or law which will make possible the early completion and perfection of the Great Lakes-St. Lawrence waterway project: be it further

Resolved, That the secretary of the senate send a copy of this resolution to the President of the United States and the President of the Senate and Speaker of the House of Representatives of the United States, and of the Montana and Minnesota Legislatures, respectively, also to our Members in Congress.

Approved by the Senate of the State of North Dakota and the House of Representatives of the State of North Dakota.

REPORTS OF COMMITTEES.

Mr. BAYARD, from the Committee on Claims, to which was referred the bill (S. 2625) for the relief of sufferers in New Mexico from the flood due to the overflow of the Rio Grande and its tributaries, reported it without amendment and submitted a report (No. 1157) thereon.

Mr. BALL, from the Committee on the District of Columbia, to which was referred the bill (H. R. 5027) to amend an act approved February 28, 1899, entitled "An act relative to the payment of claims for material and labor furnished for District of Columbia buildings," reported it without amendment.

ENROLLED BILLS PRESENTED.

Mr. SUTHERLAND, from the Committee on Enrolled Bills, reported that on February 17, 1923, they presented to the President of the United States the following enrolled bills:

S. 2531. An act to create a board of accountability for the District of Columbia, and for other purposes; and
S. 3169. An act to equalize pensions of retired policemen and firemen of the District of Columbia, and for other purposes.

BILLS AND JOINT RESOLUTIONS INTRODUCED.

Bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as follows:

By Mr. CARAWAY:

A bill (S. 4579) to authorize the Lee County Bridge District No. 2, in the State of Arkansas, to construct a bridge over the St. Francis River; to the Committee on Commerce.

By Mr. NORBECK:

A bill (S. 4580) granting the consent of Congress to the State of South Dakota for the construction of a bridge across the Missouri River between Hughes County and Stanley County, S. Dak.;

A bill (S. 4581) granting the consent of Congress to the State of South Dakota for the construction of a bridge across the Missouri River between Brule County and Lyman County, S. Dak.;

A bill (S. 4582) granting the consent of Congress to the State of South Dakota for the construction of a bridge across the Missouri River between Walworth County and Corson County, S. Dak.; and

A bill (S. 4583) granting the consent of Congress to the State of South Dakota for the construction of a bridge across the Missouri River between Charles Mix County and Gregory County, S. Dak.; to the Committee on Commerce.

By Mr. LADD:

A bill (S. 4584) to prohibit interstate commerce in the drug heroin (diacetyl-morphine); to the Committee on Interstate Commerce.

By Mr. PHIPPS:

A bill (S. 4585) granting a pension to Alexander R. Banks; to the Committee on Pensions.

By Mr. McNARY:

A joint resolution (S. J. Res. 281) for the relief of St. Helens, Oreg., by improving the channel between the harbor of St. Helens and the Columbia River; to the Committee on Commerce.

By Mr. SMOOT:

A joint resolution (S. J. Res. 282) to amend the resolution of December 29, 1920, entitled "Joint resolution to create a joint committee on the reorganization of the administrative branch of the Government"; to the Committee on Appropriations.

KANSAS CITY, MEXICO & ORIENT RAILROAD.

Mr. SHEPPARD submitted an amendment intended to be proposed by him to the bill (S. 4528) for the relief of the Kansas City, Mexico & Orient Railroad, of Texas, Oklahoma, and Kansas, which was referred to the Committee on Interstate Commerce and ordered to be printed.

FISCAL RELATIONS BETWEEN THE UNITED STATES AND THE DISTRICT OF COLUMBIA.

Mr. PHIPPS submitted an amendment providing that pursuant to the report of the joint select committee appointed under the provisions of the act of June 29, 1922, there shall be credited to the general account of the District of Columbia, required under the provisions of said act to be kept in the Treasury Department, the sum of \$7,574,416.90, being the reported balance in the general fund of said District, as shown on the books of the Treasury on June 30, 1922, as certified by the Comptroller General of the United States, and as verified in the report of said joint select committee, and that certain sums enumerated shall be debited against said fund, leaving free surplus revenues in the Treasury on June 30, 1922, belonging to the District of Columbia of \$4,438,154.92, as reported by said committee, which shall be available for the same purposes and to the same extent as amounts otherwise properly credited to the said general account in the Treasury Department, intended to be proposed by him to the third deficiency appropriation bill, which was referred to the Committee on the District of Columbia and ordered to be printed.

AMENDMENT OF THE RULES—RELEVANCY OF DEBATE.

Mr. CURTIS submitted the following resolution (S. Res. 443), which was referred to the Committee on Rules:

Resolved, That Rule XIX of the Standing Rules of the Senate be, and the same is hereby, amended by adding at the end thereof a new paragraph, to be numbered 7, as follows:

"7. Debate shall be confined to the question under consideration, unless otherwise provided by unanimous consent, and if any Senator speak beside the question, the Presiding Officer shall, or any Senator may, call him to order, and when a Senator is called to order he shall be admonished by the Presiding Officer to proceed in order, and if he be called to order a second time under this rule he shall sit down and not proceed without leave of the Senate, which leave, if granted, shall be upon motion that he be allowed to proceed in order, which motion and all proceedings under this rule shall be determined without debate."

ADDRESS BY SENATOR LENROOT.

Mr. CALDER. Mr. President, I ask unanimous consent to have printed in the RECORD, in the regular type, an address delivered by the junior Senator from Wisconsin [Mr. LENROOT] at the annual dinner of the Alumni Association of the Law School of the New York University, in New York City, February 10, 1923, on the subject of Congress and the Constitution.

There being no objection, the address was ordered to be printed in the RECORD in 8-point type.

On the occasion stated, Senator LENROOT spoke as follows:

CONGRESS AND THE CONSTITUTION.

Mr. Toastmaster, ladies, and gentlemen, when I chose the subject of this address I hoped to be able to make such preparation as would enable me to present a careful review of the historical side of the subject to form the basis for some observations upon congressional government generally and pending proposals enlarging the powers of Congress to construe and, in effect, amend the Constitution. I regret that my official duties have been such that I have been unable to deal with

the subject in the manner I had planned, and I must, therefore, content myself with a more general survey.

With the Constitutional Convention, its debates, its conflicting elements, and the necessary resulting compromises in the framing of the Constitution you are all familiar. But inasmuch as we to-day so often hear it urged by those who charge that we are drifting away from democracy and toward aristocracy, that we turn back to the ideals and purposes of the founders of our Government, it may not be amiss to dwell for a few moments upon the character of the men composing the Constitutional Convention, and some of the purposes they had in mind in agreeing to certain provisions of the Constitution.

There were 55 members entitled to seats in the convention. Of these, only about 20 took a prominent part in its deliberations. But of these 20, it may be truly said, "There were giants in those days." Strange as it may seem, there were the same contending elements of differing political theory that we have to-day—one distrustful of democracy as well as monarchy, the other having confidence that there could be no such thing as an excess of democracy in government.

As we look back through the years and read the history of that convention, we are impressed that although we like to pride ourselves that we have progressed greatly since then—and we have—that greater trust is now reposed in the people than was then thought wise, yet I do not believe it possible to have a convention to-day where the delegates would be men of such learning, of such ability, and patriotic purpose as were those men of 1787.

Distrustful of too much democracy, yet they reversed all political theories of their day in that they established sovereignty in neither the executive nor legislative departments of government, but in the people themselves. They had studied other governments in which sovereignty was in the King, or becoming more democratic, in the parliament or legislative assembly. But, in establishing our government, sovereignty was placed with the people. The Constitution and the executive, the legislative, and the judicial departments were but creatures of their will. They then proceeded to clothe their creatures with certain grants of powers, but to insure that such grants would not be abused set up a system of checks and balances familiar to us all. Of Congress, the House of Representatives was to be the popular body, representing more directly the will of the people, with frequent elections, while the Senate was designed to be the more conservative body, guarding property rights from encroachment by the popular will and representing the State governments as distinguished from the people within the States. When I hear some of our radical friends plead for a return to the government and ideals of the fathers, I wonder if they have any knowledge of what some of those ideals were.

The composition of the Senate, elected by State legislatures, as originally established in the Constitution, was determined upon motion of Mr. Dickinson in the constitutional convention, and Mr. Madison in reporting the debate tells us "Mr. Dickinson had two reasons for his motion: First, because the sense of the States would be better collected through their governments than immediately from the people at large; secondly, because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life and their weight of property and bearing as strong a likeness to the British House of Lords as possible, and he thought such characters more likely to be selected by the State legislatures than by any other mode." The motion was adopted. General Pinckney, another member, proposed "that no salary be allowed Senators, giving as his reason that as that branch was meant to represent the wealth of the country it ought to be composed of persons of wealth, and if no allowance was made the wealthy alone would undertake the service." His proposal was not adopted, but I have quoted him to show the conception the framers of the Constitution had of the Senate, and how we have departed from it in placing greater trust in the people. Many members of the convention expressed distrust of the people, and the word "demagogue" was used almost as frequently in the debates then as it is in the press to-day. Elbridge Gerry, one of the prominent members, said: "The evils we experience flow from the excess of democracy. The people do not want virtue, but are the dupes of pretended patriots. In Massachusetts it had been fully confirmed by experience that they are daily misled into the most baneful measures and opinions by the false reports circulated by designing men." There is opinion of the same sort to-day in certain quarters, which confirms the saying "There is nothing new under the sun." But as there is an exception to every

rule, the framers of the Constitution did have a new conception.

A written Constitution, made by the people, restraining not only their servants created by it, but restraining the people themselves from violating its terms so long as it was in force. Too much praise can not be given the men who framed the Constitution. It was not a perfect instrument, compromises were made, and defects may be shown, but they launched upon the world a system of government that has stood the test of 136 years, of four wars with foreign nations, and one domestic rebellion. It has passed the experimental stage, and if we and our children shall be true to our obligations of citizenship, it will live as its founders hoped, but hardly dared believe, through the ages.

That it has so lived, however, is due not alone to the framers, but more especially to John Marshall. Had it not been for his master mind I am afraid that the United States of America would have held now only a place in history, a Government that was but is no more. There were two things essential to the perpetuity of the Constitution, an authoritative construction of its provisions, independent of the legislative and executive departments of the Government, and also a liberal construction of the powers granted. Without these the Constitution of 1787 could not long endure. With them, together with the power of amendment provided for in the instrument itself, there is no reason why it should not live and serve as long as human beings shall inhabit the earth. The first essential was the establishment of the power of judicial review over the acts of Congress. This was definitely settled by the great opinion of Marshall in *Marbury against Madison*.

Never was his reasoning more conclusive, never was his logic more penetrating. I shall only take time to quote one paragraph from the opinion. He says, "The powers of the legislature are defined and limited, and that those limits may not be mistaken or forgotten the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may at any time be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed. It is a proposition too plain to be contested that the Constitution controls any legislative act repugnant to it, or that the legislature may alter the Constitution by an ordinary act." His reasoning is conclusive. Unless the Constitution be held superior to an act of Congress, the Constitution becomes a mere scrap of paper, an instrument "more honored in the breach than the observance." Marshall, however, does not go into the actual intent of the framers of the Constitution with reference to the power of judicial review of acts of Congress. He is content to read the intent from the instrument itself. But it has been argued in the past, and is being argued to-day, in attacks upon the court, that it has usurped the power of the legislature, and that the framers of the Constitution never intended that the Supreme Court should exercise any such power. In support of this they quote from a speech of Mr. Mercer, a delegate in the convention. But it is difficult to believe in the intellectual honesty of these men. One would naturally assume that anyone attempting to publicly discuss this question would have read all of the debate found in the reports upon the subject, but if he had he could never make such claim. As a matter of fact, 20 members of the convention, and they were the most prominent members, at various times expressed themselves as being of the opinion that the judiciary would have the power of review over legislative acts, and there were only three members who expressed themselves as being opposed to such power being lodged in the courts. One of the three was Mr. Mercer, but none of the three expressed an opinion that the power was not granted by the Constitution, only that it ought not to be.

I now wish to discuss very briefly what would have happened had the court held that it did not have the power of judicial review. The result would have been the destruction of the Constitution. To illustrate, a protective tariff would have been constitutional when the party favoring it was in control of Congress, it would have been unconstitutional when the opposition had control. Likewise as to internal improvements undertaken by the Government; and I might give several other illustrations where one party insisted that a policy of the other was contrary to the Constitution. But this is not all. But for the restraining influence upon Congress, who can tell what rights would have been impaired or destroyed in obedience to party bosses and representatives of special privilege upon the one hand, and the passing emotions of the people, led by unscrupulous demagogues, upon the other?

But, it is said, are not Senators and Representatives as patriotic and as conscientious as judges? I wish I could answer in the affirmative. I wish I could say that legislators have a most scrupulous and tender regard for the Constitution and would not go beyond the limitations placed upon them by it. I regret that I can not so answer. If I did one would only need to refer to the *CONGRESSIONAL RECORD* to confound me.

But to return to my subject. The doctrine of *Marbury against Madison* has long since been accepted by all political parties and the people generally. It would be interesting to follow the subject from the *Marbury* to the *Dred Scott* case, but time will not permit. It need only be said that the followers of Jefferson, the strict constructionists, did not fully accept it until after the decision of Chief Justice Taney, in the *Dred Scott* case, when the platform of the Democratic Party in 1860 declared—

Resolved, That the Democratic Party will abide by the decision of the Supreme Court of the United States on questions of constitutional law.

Again illustrating the truth of the old maxim, "It depends on whose ox is gored." Here the followers of Jefferson and Jackson, who had strenuously opposed the doctrine of the *Marbury* case, accepted it when a vitally important decision was made which was to their interest, and likewise the Republicans supporting the doctrine of Marshall and Hamilton for the first time began to question it. Happily the doctrine is now accepted by everyone, and no one proposes to change it except by amendment of the Constitution itself.

So much for the power of judicial review. The second essential for the permanency of the Constitution and our form of government was the doctrine of implied powers or liberal construction. Without this construction Congress would have been placed in a strait-jacket, utterly unable to function in such a way as to serve the people. Nevertheless, the contest between the strict and the liberal or loose constructionists went on for years and is still at times in evidence. Jefferson and Madison were the great exponents of strict, and Marshall and Hamilton of liberal, construction. I can not take the time to review this subject at length, but Jefferson, when confronted with the results of the application of his own doctrine, failed to practice what he had preached. The Louisiana Purchase conducted by him was the first important application in a concrete case of liberal construction. Under no circumstances could a strict construction of the Constitution have permitted the Louisiana Purchase, and yet to-day it stands as one of the monuments to Jefferson's greatness. It is only fair to say that he asked Congress to propose an amendment to the Constitution ratifying the Louisiana Purchase, but it was not done, and Jefferson himself never afterwards claimed that his act was a violation of the Constitution.

For many years strict, as against liberal, construction was a party issue, the Democratic Party taking the side of strict construction and the Whig and Republican Parties the liberal side. To-day the issue is practically dead. At least, it is not a matter of party alignment. In a general way it may be said the party in power to-day is for liberal construction, but when out of power takes the other view.

To conclude this phase of the subject, I do not think it can be denied that the great instrument framed in 1787 at Philadelphia would not have endured to this day had it not been for the establishment of the doctrine of judicial review and of liberal construction of the Constitution.

I now wish to devote a few minutes to a discussion of the exercise of the power of judicial review.

There have been only a few instances where its exercise has had an important bearing upon the life of the Nation. Its greatest value has been the restraining influence upon Congress to keep within the limits of the Constitution and the liberal construction of the document itself.

There have been some cases, however, where the court held acts of Congress invalid which were so important, and the decisions of the court were so contrary to the interests of the Nation that they did not long prevail.

I can not take time to more than recall the cases to your minds and what happened with respect to them. The *Legal Tender* case is one of the most important. Has the Congress of the United States power to make bills of credit a legal tender? was the question. It came before the court in the case of *Hepburn against Griswold*, and the legal tender act of 1862 was held unconstitutional; but a vacancy occurred in the court through the resignation of Justice Grier, and by act of April 10, 1869, Congress increased the number of members of the court by one, so President Grant had two appointments to make. Both of his appointees were of the opinion the act

was constitutional, and the case again came before the court in *Parker against Davis*. The decision in *Hepburn against Griswold* was overruled and the act was held valid.

I think this is the only important case where an important constitutional question was settled by changing the complexion of the court. The decision in the *Dredd Scott* case was overruled at the point of the sword, and the fourteenth and fifteenth amendments resulted.

The action of the court in holding invalid the income tax law of 1894, together with its action holding invalid the child labor law of 1916, can not, it seems to me, be successfully defended. But the Constitution was amended and income taxes are now levied under the express sanction of the Constitution, and the Constitution will soon be amended to permit the prohibition by Congress of child labor.

That the court is subject to just criticism in some of its decisions in construing the police power of the States, I believe is true, but that is a subject which I have not the time to discuss to-night nor you the patience to listen to. I wish to restrict my observations to Congress and the Constitution and the attitude of the court with respect to the same.

I may suggest, however, that members of the Supreme Court continue to be human beings after their appointment. While theirs is the last word of authority upon the Constitution, they are not infallible as men, and the Constitution itself provides a way by which their mistakes may be corrected. The only practical question is whether the method provided to amend the Constitution is too difficult. I am frank to say that I think it is. I believe that as to certain matters affecting fundamental rights of men, rights that are based upon principles that can not change with time or circumstance, because they are the foundation stones of civilization itself, that there should be no relaxation of the difficulty of amendment. But as to matters of policy of government, I believe we might safely provide that amendments touching those matters when proposed by Congress and ratified by direct vote of the people in two-thirds of the States, instead of three-fourths, should become valid amendments to the Constitution.

There is, however, an insidious propaganda to destroy the power of the Supreme Court to pass upon the validity of acts of Congress, and to make of Congress the supreme judge of its own acts. It is proposed that if the Supreme Court shall hold an act of Congress unconstitutional it shall again be considered by Congress, and if passed by a two-thirds vote of each House it shall become a law, notwithstanding the action of the Supreme Court.

Should this ever come to pass, the end of the Constitution will not be far distant. It is astonishing that this proposition should come from the source it does. It emanates from those who declare that human rights are being destroyed by the courts; that Congress is utterly reactionary, and that the Members of both Houses, with a few exceptions, are controlled by Wall Street and the predatory interests of the country. Their proposition is: "We have no confidence in Congress; it does not represent the people, but only special interests, and we propose to amend the Constitution so as to provide that whatever such a reactionary Congress may do if supported by a vote of two-thirds of its membership shall be the law of the land, notwithstanding the provisions of the Constitution of the United States." They say they are willing that the rights of free speech, the right to peacefully assemble, the right of religious freedom, of trial by jury, and all of the other rights guaranteed by the Constitution shall be placed in the hands of a Wall Street Congress, with the power to destroy them by a two-thirds vote. To say the least, there has been a great deal of loose and hurried thinking by those favoring this proposition. As for myself, while I have a higher regard for Congress than the proponents of this amendment, I hope I shall never live to see the day when by a two-thirds vote of Congress any man may be denied the right to worship God according to the dictates of his conscience, when right of trial by jury may be denied, or any of the other rights handed down from *Magna Charta* and embodied in the Constitution of the United States.

While the power of judicial review is well established, it relates only to inquiring and determining whether an act of Congress or of the States is in conflict with the Constitution. The court has no power to inquire into the wisdom of acts of Congress falling within its constitutional powers. For the court to legislate is as much a violation of the Constitution as for Congress to exceed the limits of its constitutional powers. In one notable case the Supreme Court has read into a valid statute words not placed there by Congress and which Congress had repeatedly refused to place there. I refer to the *Sherman Anti-*

trust Act as construed in the *Standard Oil* case. I believe that that opinion will always stand as a reflection upon that great court. It is no answer to say that in this case Congress has seen fit to accept the amendment of the statute made by the court. The fact is that the court acted not in a judicial but in a legislative capacity under every rule of legislative intent and the doctrine of *stare decisis*. However, the exercise of such power can never bring lasting injury, for Congress always has power to amend the law within its constitutional powers and declare its will in such unmistakable language that the court will be compelled to follow it.

I now pass to a very brief consideration of the eighteenth amendment and the present agitation concerning it. I shall refer only to its legal aspects wholly apart from the merits or demerits of prohibition. It is a part of the Constitution, and it is the duty of Congress and the Executive to enforce it and of every citizen to abide by its terms. It is the right of every citizen to advocate the modification or repeal of the eighteenth amendment, but no citizen has the right to ask Congress to violate its terms. There is a widespread propaganda to secure legislation from Congress permitting the manufacture and sale of beer and light wines. That Congress could constitutionally increase the alcoholic percentage of beer to between 2 or 3 per cent is admitted. Whether it should do so is a question of policy, but to go beyond that or permit the manufacture or sale of light wines would clearly violate the Constitution. To use the language of the Supreme Court, "the eighteenth amendment is operative throughout the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act whether by Congress, by a State legislature, or by a Territorial assembly which authorizes or sanctions what the section prohibits."

Any attempt, therefore, to secure legislation permitting the sale of intoxicating beverages is asking Senators and Representatives to deliberately violate their oaths of office, and all to no purpose, for the court would hold any such legislation invalid.

The remedy for such ills as can be remedied is by obedience to the Constitution, securing amendments where amendments are necessary, by the appointment of judges of our courts who are not only able lawyers but men of human sympathies and outlook, living neither in the last century or the next, but in the living, throbbing world of to-day, keenly alive to the thought and aspirations of the people, and who will apply the Constitution to twentieth-century problems with twentieth-century minds.

It should never be forgotten by members of all courts, and by lawyers as well, that, to use the language of the Supreme Court in the case of *South Carolina against United States*, "the Constitution is a written instrument. As such its meaning does not alter, and what it meant when adopted it means now. Being a grant of powers to a government, its language is general, and as changes come in social and political life it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred. In other words, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable." And we should never forget the words of *Story*: "The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the wants of which were locked up in the inscrutable purposes of Providence."

The Constitution has not outlived its usefulness. Its protecting care was never more needed than to-day. It is the duty of every citizen to withstand every assault upon it, whether its enemies be predatory interests seeking special privileges to the public injury or whether they be those who are opposed to any government that would safeguard and protect the rights and liberties of every citizen under its flag.

That Congress shall at all times have respect for and be governed by the Constitution is the responsibility of the voters. It is their obligation to see to it that Members of Congress, Senators and Representatives, shall be men who will legislate not for bloc or class or section but for all the people of America, who recognize that duty to country comes before duty to party, men who shall do their part to conserve all that is good in our past and strive to make to-morrow better than to-day.

PROHIBITION ENFORCEMENT.

Mr. STERLING. Mr. President, I have here a clipping from the *Christian Science Monitor*, under the heading "Editorial notes," which relates to prohibition. It is short and I ask that it may be read at the desk.

The VICE PRESIDENT. It will be read as requested.

The reading clerk read as follows:

[From the Christian Science Monitor.]

EDITORIAL NOTES.

Whatever may appear to be the extent to which the prohibition law in the United States is being willfully disregarded by the rich, indications on every hand point to the fact that since the enactment of the Volstead Act drunkenness among the poor has diminished so considerably as to have practically disappeared in many sections of the country. In this connection, what Dr. Thomas J. Riley, general secretary of the Brooklyn (N. Y.) Bureau of Charities, recently stated may be taken as authoritative. He declared in part:

"Of the families that come to the Bureau of Charities for aid, the percentage in which drunkenness is a cause of their need has declined from 12 per cent in 1916 to 4 per cent in 1922. * * * This decrease is not peculiar to New York City. * * * In Cleveland the percentage dropped from 11.15 in 1919 to 2.61 in 1921; in Boston, from 10.63 to 2.28; in St. Louis, from 6.03 to 0.70; in Milwaukee, from 9.64 to 3.45; in New Haven, Conn., 13 to 0.3; and in Rochester, N. Y., 15.3 to 3.8.

"This decline is coincident with the spread of State and National prohibition, and one who works with families can not escape the conviction that it is chiefly, if not wholly, due to the enforcement of prohibition, however faulty it may have been."

Such figures do more for the cause of prohibition than almost any amount of propaganda by the wets can do against it. What is more, such families as those to whom Doctor Riley refers constitute a mighty section of the Nation, and it may be taken for granted that, having once tasted the benefits of prohibition, they will have something very definite to say before permitting its modification in the slightest degree.

MEMORIAL ADDRESS ON THE LATE REPRESENTATIVE HENRY D. FLOOD, OF VIRGINIA.

Mr. SWANSON. Mr. President, on the 10th of last December the remains of the late Hon. H. D. Flood, formerly a Representative from the State of Virginia, were removed from a vault in this city, where they had been temporarily placed with appropriate ceremonies, participated in by the Senate and House of Representatives, to their final resting place in a mausoleum at Appomattox, Va., his home. The occasion was made notable by the attendance of a vast concourse of people from all parts of Virginia, including the highest State officials, who thus met to pay just tribute to this distinguished Representative, so dearly loved and so highly esteemed by the people of his native State. Upon this occasion I was requested to deliver an address.

I ask unanimous consent that the address then delivered by me may be printed in the Record in 8-point type and be made a part of the "Memorial Addresses" to be published regarding the life, character, and public services of the late Representative Flood.

There being no objection, the address was ordered to be printed in the Record in 8-point type, as follows:

Senator SWANSON spoke as follows:

"Ladies and gentlemen, We have assembled to-day to put in his final resting place and pay just tribute to one who while living possessed in a most preeminent degree our abiding and abounding love. If permitted to pursue my own inclination instead of addressing you, I would be a silent participant in these exercises, communing with my own great sorrow in the loss of one who was closer and dearer than a friend—one for whom I entertained an affection and admiration equal to that of a brother. For more than 35 years I knew him intimately, our relations, personal and political, being closely intertwined. There were no shadows on our friendship, no secrets in our hearts.

"Our association began at the University of Virginia in 1885 when we were members of the law class, graduating the same year and commencing at the same time our professional and political careers. At the university he was my college chum—our relations fully measuring up to all this term implies. We studied together; we visited together; we recreated together, discussed our future hopes and ambitions, and were closely associated and cooperated in all class and college politics. We were inseparable, and each rejoiced in the others' honors and preferments almost like they were personal triumphs.

"How vividly do I recall these halcyon college days, so bright, so joyous, made doubly so by dear 'Hal,' as we all lovingly called him! The chivalric feelings of friendship and admiration then formed never cease, but continue through life and gather strength with each receding year. How sweet and inspiring are the days of early youth, sparkling with unselfish friendship, gleaming with lofty aspirations and high ideals, unburdened by cares and responsibilities, with young blood rapidly coursing through the veins, and we looking upon life as through a gilded veil and everything appearing so bright, so pleasing. The poet has well expressed it:

"We are stronger and better under manhood's sterner reign,
But still we feel that something sweet,
Followed youth with flying feet,
And will never come again.

Something beautiful has vanished and we sigh for it in vain,
We behold it everywhere,
On the earth and in the air,
But it never comes again.

"Ah, the ties of love and friendship then formed never break. Like hooks of steel they grab and hold through the stress and storm of life. Thus it was with Hal Flood and myself. The friendship then pledged and formed continued and increased to his death. In the many political conflicts in which we engaged we were to each other a supporting and sustaining friend. Where one was seen on the field of conflict the other was invariably found. When his untimely death came, upon none did the blow fall more heavily than upon me. None miss more than I his cheery smile, his cordial greeting, his generous and kind consideration, and the friendly pulsations of as loyal and manly heart as ever throbbed in human breast.

"Hal Flood possessed an unusually attractive and pleasing personality. His clear, open, frank, blue eyes looked you straight in the face, bespeaking honesty, integrity and truth. He loathed a lie and a falsehood never soiled his lips. He had a cheerful, hopeful disposition which radiated sunshine and happiness. His presence dispelled gloom and doubt. His manner was cordial and hearty, easily winning good will. His society was universally sought and enjoyed. He was the soul of chivalric honor and integrity. His word given was never withdrawn nor broken. No personal dangers, no allurements or promptings of personal advantage or preferment could induce him to violate a promise. Those who knew him trusted him implicitly.

"He had a heart as courageous as a lion, declining no conflicts and fearing no danger. The fiercer the conflict the more resolute he became. His moral courage was equal to his physical courage. He never evaded an issue, he never shirked a responsibility; at times carrying this splendid virtue to a point almost beyond the limits of prudence and discretion. No man of my acquaintance surpassed him in the manly virtue of courage, both moral and physical. In all fierce political contests his clear voice rang out with bold defiance and encouraging hope. This battle call of his was a great rallying force in hours of doubt and confusion.

"This quality marked him as an aggressive leader, cheered and loved by an enthusiastic following. He hewed his way to the front with the battleax of the warrior. He despised preferment obtained by the insinuating arts of the demagogue. His chosen place of action was on the field of battle and not in the cloister of intrigue and diplomacy. He was the Rupert of Virginia Democracy—bold, courageous, and daring. He cheerfully and proudly wore scars obtained by fidelity to friendship or for a cause espoused.

"He possessed a persistency and perseverance of purpose which would have attained distinction in any vocation of life selected. When he reached a conclusion in the course of life no obstacles could deter him in continuous effort to reach the attainment. He was the personification of tireless energy and determined effort. He hammered, hammered, and hammered until success came. His industry was as much an element in his success as were his moral and intellectual qualities. From early youth to death his life was one of ceaseless activity. This sapped the foundations of a constitution phenomenal in its robustness and strength and occasioned his early death.

"Only those who are actively engaged in public life know its heavy exactions, its ceaseless wear and tear, its continuous mental and physical strain, all of which must finally end in a shattered constitution unable to sustain the heavy burden. Hal Flood's death bears testimony to his unselfish and patriotic devotion to public duties regardless of personal consequences. For years before his death he knew of his ailment and of its dangerous character, but it did not deter him from discharging his full share of public duty and responsibility.

"He died with his armor on, as chivalric, as brave, and worthy a champion as ever contended for a cause. His life illustrated forcibly and completely those striking lines from one of America's greatest poets:

"The heights by great men reached and kept
Were not attained by sudden flight,
But they, while their companions slept,
Were toiling upwards in the night.

"Hal Flood's intellectual attainments were of rare excellence. He possessed a strong masculine mind, fully capable of logical reasoning and of reaching safe and sensible conclusions. He was thoughtful and gave public questions full and conscientious examination and consideration. He mastered the details of questions and arranged his conclusions and expressions logically and attractively. He had a splendid, regular, and orderly mind that worked harmoniously. What he lacked in brilliance and eloquence of expression he more than made up by strength and solidarity. He was a ready and aggressive debater and an attractive, instructive, and entertaining speaker. He was highly educated and splendidly read in history, literature, and law. His intellectual attainments were

such as to enable him most efficiently to discharge any position in our State or National Government.

"He possessed to a preeminent degree those moral qualities which constitute the foundation for success in any of life's undertakings. He had a deep religious conviction which was well known by those intimately acquainted with him. This was one of his marked characteristics. He had absolute faith in the Christian religion, its teachings, and its promises for the future. How often have I seen him when he had been through exciting storms and conflicts humbly kneel before retiring to engage in prayer. This he did in early life when I first knew him and continued to his death.

"This denoted a religious reverence and a deep strain of Christian faith, which ennobled him in my mind and bore testimony of his splendid worth as a Christian character. It was always done in such an unostentatious way and with such simplicity as to prove his deep conviction and sincerity.

"These splendid moral and manly qualities were further enriched by a gentle nature and an affectionate heart. Like all true Virginians, he cherished almost to a passion the ties of blood and family. Never in all of my experience have I seen a sweeter, deeper, and more enduring love than that which he possessed for his only sister. It was a flower he cherished in his youth, and its fragrance filled his heart until the hour of his death.

"The shadow of death never fell upon a purer, sweeter, happier home, where mother, father, children lived in mutual adoration. His love for his wife went to the deepest depths of his noble heart. A widow now weeps where almost yesterday a wife adored; two orphans now mourn where almost yesterday two children lovingly played on a father's knee. He was a most dutiful son, a generous, loving brother, a most devoted, attentive, and incomparable husband and father.

"This man, with qualities of mind and heart of the warrior type, gave new grace and brought new charms to social and domestic life. A man possessing such qualities of mind and heart could not fail to attain success in any undertaking to which he might aspire. Capacity, character, and courage are the three great elements forming the foundation upon which success is builded. Each of these splendid qualities strikingly existed in Hal Flood and contributed to the great success he attained. Statesmanship consists in the wisdom to discern the right pathway and then in the character and courage to follow the right pathway when found. Hal Flood had the wisdom to discern and then the valor to follow this pathway. This makes great and successful men. The measure of life's success is not the days you have lived but the distance you have traveled. His life was crowned with honors, triumphs, and the affection and admiration of the people of his district and the State of Virginia. He had traveled far on the road of honorable success.

"He had just passed the age of 21, which made him a citizen, when he was elected to the General Assembly of Virginia, being at that time the youngest member of that body. He at once attained prominence by his indefatigable industry, his ability as a debater, his thorough and varied information upon legislative matters. He was at this youthful age one of the most potential members of the general assembly, and his rapid advancement gave promise of his future career of high honor and great usefulness.

"He was shortly afterwards elected Commonwealth's attorney of Appomattox County, which position he held for years, filling it with marked ability and fairness and increasing his reputation as a lawyer and the esteem of the people of his county for his faithful and fearless discharge of his duties. He practiced at the bar of all the surrounding counties, and soon acquired one of the largest and most lucrative practices in his section. He was recognized as a leader of the bar of the courts in which he practiced. There is no greater school in the world for the development of men for usefulness and responsibility in after life than the practice of law in country circuits. Far from law libraries and legal authorities, lawyers are here compelled to settle difficult questions of law by force of their intellect and by persuasive argument addressed to court and jury. Legal contests are clashes of intellect, and not a race of industry in collecting authorities and decisions. It is a school for developing clear, logical reasoning, cogent and forceful expression, great resourcefulness, and efficient management of men and matters.

"From this school has emerged America's most eminent lawyers, statesmen, and orators. From it came Patrick Henry, the forest-born Demosthenes, whose eloquence called a continent to arms; from it came Chief Justice Marshall, the greatest of all modern jurists, whose mighty decisions infused life and vigor into the Federal Constitution, a dry legal parchment, forming under it the most efficient and capable of gov-

ernments; from it came Thomas Jefferson, the founder and father of the democracies of the world; from this school emerged Douglas, Lincoln, Andrew Jackson, Clay, and many great and distinguished men whose achievements illuminate the pages of American history.

"Those who are capable of surviving the fierce mental contests daily encountered in these courts are equipped for success in any arena of life. Hal Flood, by sheer force of industry, intellect, persuasive power of speech, and masterful management of men, attained distinction at the bar of these several counties and prepared himself for the successful legislative career in State and Nation with which his after life was so splendidly adorned.

"His success in politics largely obscured his success, ability, and reputation as a lawyer, which was very extensive, large, and commanding. So successful was his career in the general assembly and in his administration of the office of Commonwealth's attorney that the people of the several counties in which he practiced law soon sent him to the Senate of Virginia, which position he filled for many years with marked ability. He was practically the leader of the Virginia Senate, a body composed of able and worthy men, and many of the great legislative acts which benefited the people of Virginia were the products of his brain and the handiwork of his masterful hand.

"He became the leader and adviser of all the surrounding counties, where the people knew him and recognized his worth as a man and his ability and patriotism as a public servant. That these surrounding counties were securely held for good government in Virginia and did not come under the domination of ignorant negroes was largely due to the skill of Hal Flood as a political leader, his great capacity, his tireless energy, and his indomitable pluck and courage. He stood firm and adamant as a rock, around which the good moral forces of this section rallied in their contests for good government and white supremacy.

"These elements in one so young gave him an enthusiastic following, which determined that he should be sent to Congress and given a broader field for his talents and usefulness. In 1896 he was nominated for Congress by the Democrats of the tenth congressional district, but was defeated in that election. He might have availed himself of legal technicalities and possibly have received the certificate of election. I recall how manfully he repudiated any suggestion to accept such a commission and forcibly stated that he never wished to represent a people unless he was satisfied he was entitled to do so by the people's free and fair choice. This splendid conduct endeared him to his friends and won the esteem and respect of his political enemies. He desired no honor not fairly won and honorably bestowed.

"I recall meeting him a short time after his defeat, which would have ended the political career of most men, but it did not in the least affect his stout heart nor lessen his firm and honorable ambition. In this—the only defeat that ever came to him in his long and successful political career—he displayed a manly worth, a hopeful courage, and a fearless determination which proved his greatness as much as any triumph that crowned him. It is in the hour of defeat and disaster that the innate greatness and power of men are displayed. Those who can triumph over the discouragement incident to defeat will long wear the crown of success. This truth was fully illustrated in the life of our dear friend.

"Four years after this the Democratic voters of this congressional district renominated him for Congress. He was overwhelmingly elected and continued to serve the people of his district until the hour of his death—for more than 20 years. In my long experience in public life I have never known a Representative to have closer relations with his district or possess to a greater degree their affection, esteem, and admiration than did Hal Flood. The people of his district followed him with a loyalty, with a constancy, and with a devotion that was unexcelled. So deep was their affection they almost considered his political friends were their friends and his political enemies their enemies. Never did a Representative serve a people more faithfully, more efficiently, and more willingly than did he the splendid citizenship of the tenth district. Their troubles were his troubles, their desires his desires, their misfortunes his misfortunes, and their successes his successes. We here witness a spectacle so pleasing and so consoling in politics of a Representative and his people welded together by an insoluble bond of affection and esteem. Such ties lighten the burdens of political life and makes an onerous work a duty of love and delight. It gives a gleam of sunshine to political life with its storms, tempests, and hardships. Frequently Hal Flood was deterred from listening to the promptings of ambition for higher honors and

broader fields of usefulness because he feared that the change might lessen this association which so strongly and so delightfully bound him to the splendid people of this district. Frequently have I heard him give expression to this sentiment. The heart throbs of the people of this district met a full and grateful response in the pulsations of his noble heart.

"His career in Congress was one of great usefulness and marked distinction. An able, accomplished, and thoroughly equipped debater, he was listened to with great attention and had much influence in the House of Representatives. He was chairman of the Committee on the Territories of the House and was for many years largely responsible for the legislation governing our Territories. This entailed great work and responsibility on him, which he efficiently and faithfully discharged. He was the author of the resolution which admitted Arizona and New Mexico to statehood, and thus to him belongs the honor of placing the last two stars in Old Glory, thus completing statehood of continental United States. Under his wise and constructive statesmanship the measure was enacted giving to Alaska, that land of wonderful wealth and enchanting beauty, its first legislative assembly, forming the greatest epoch so far in its history.

"The people of the various Territories for which he as chairman of the Committee on the Territories legislated acquired for him an affection and esteem equal to that possessed by the people of his district and State. Their sorrow at his untimely death was deep and profound. They had learned to appreciate his fairness, his statesmanship, his ability, and his deep interest in their welfare and progress. His achievements as chairman of this committee furnished proof of his ability as a constructive statesman.

"He was made chairman of the great Committee on Foreign Affairs in January, 1913, which responsible place he held as long as the House was Democratic, until the 4th of March, 1919. He was chairman of this great committee, with all of its vast responsibilities and burdens, during the great World War and for some time after the conclusion of peace. During the great World War he occupied a most important place in the House of Representatives as chairman of this great committee. He introduced in the House and secured the passage of the resolution declaring war against the Imperial German Government, and opened the debate on this resolution with a speech of rare ability, clearness, eloquence, and power. This address made a profound impression in the entire country and marked him as a man of unusual ability.

"In the House of Representatives, with all of its conflicting views and interests, the responsibility of guiding our foreign affairs during the Great War was intrusted to him. It was a most difficult task, requiring rare ability, masterful management of men, and great parliamentary skill. He fully measured up to the responsible duties imposed, and greatly added to his established reputation as a debater, parliamentarian, and statesman. During these dark days and by the handling of these grave responsibilities he grew from a State to a national character, becoming one of the potential and trusted men of the Nation. If he had lived and continued in the House of Representatives, the highest honors, the most important posts the House had to bestow were within his grasp. He had attained an acknowledged position where the highest honors inevitably would have crowned him.

"With this work and these burdens, which were sufficient for anyone to bear, he had assumed at the same time other grave and important responsibilities. He was made chairman of the Democratic National Congressional Committee, which directed the campaign for the election and return of Democratic Members in all the congressional districts of the United States. He was absorbed in this work, conscientiously and industriously meeting all the vast and varied duties appertaining to this important position. Only those who have been connected with national campaigns can fully appreciate the immense and important work thus entailed upon him. In this he displayed ability as a national leader in politics, was most successful, and his associates insisted upon his continuance in this arduous position.

"But this was not the limit of his work and responsibility when he died. The Democratic State committee of Virginia had unanimously elected him as chairman of the Democratic Party to conduct the last gubernatorial election. All the work, burdens, and responsibility of this campaign were imposed on him. He went into this election with all the energy, activity, zeal, and enthusiasm he possessed. He campaigned the State; he organized the Democratic Party; he put spirit, enthusiasm, and determination in the Democratic ranks, and by his indomitable energy, judgment, wise and courageous management of the campaign he achieved the greatest success ever obtained by the Democracy of his State.

"We have the consolation of knowing the last days of his life were cheered by this splendid Democratic victory and were crowned with the loving admiration of a grateful State Democracy. All of this vast work which he assumed he was able to successfully administer because he worked systematically, orderly, and energetically, and gave all of his mind, intellect, and time to the work he had assumed.

"In every line of human endeavor that he entered he made marked success. He was a successful business man, and if he had devoted his time and talents to the accumulation of money he would have been one of our richest men. Few possessed better business judgment.

"He was a member of the constitutional convention, and one of its most influential members. His work in this convention alone would have entitled him to the everlasting gratitude of the people of Virginia. He was a member of the State debt commission, which amicably settled the existing debt between Virginia and West Virginia. His judgment, his ability, his skill, his power of managing men were largely instrumental in effecting the happy results of this delicate and intricate matter.

"During his long political career no scandal ever soiled his fair name, no stain ever followed his footsteps. He possessed to a preeminent degree sterling honesty, that great virtue around which all other virtues cling, without which they, groveling, fall in dust and weeds. This clean and brilliant record had so impressed the people of Virginia that they would have willingly bestowed upon him any honor, any position, however exalted, within their power to bestow.

"It is well that his remains will rest in the dear old county of Appomattox. He loved every inch of her soil, her people were closer to him than all others. How often in speaking of the future and of his old age had he pictured with delightful anticipation living among her kindly people and engaging in the cultivation of the farm which he cherished to a passion. We lay to rest here one of Appomattox's most distinguished sons, one who brought distinction to this county, one who was a potential factor in the distribution of blessings to State, Nation, and humanity. He comes to remain among the people who loved him with a deep affection and who had for him a confidence and admiration never excelled.

"As we gather here to-day we can not fail to recall some of the close associates of Hal Flood, who have departed this life and whose society we believe he now enjoys. Foremost and first, Senator Daniel, possessed of a marvelous eloquence, able, patriotic, whose gleaming brilliance and genius made Virginia famous and illustrious the world over; then, that sturdy character, that splendid statesman and leader, Senator Martin, the personification of wisdom and achievement; Frank Lassiter, the soul of chivalry, courtesy, gallantry; dear Walter Watson, cultivated, judicious, gentle, and attractive as a woman, strong and firm as a man; Edward Saunders, the best parliamentarian that ever presided over the General Assembly of Virginia, an intelligent giant, cold exterior but a warm, kind heart; Robert James, the wise and capable Democratic chairman and leader of whom it may well be said: He never failed a friend, he never forgot a favor.

"My friends, standing at the grave of our departed loved one, our belief in a Supreme Being, just and merciful, and in the immortality of the soul, furnishes us consolation in our grief and illumines with hope the dark shadows of our sorrow. 'If a man die shall he live again?' has been the perplexing problem which has agitated alike the keen intellect of the philosopher and the untutored mind of the savage. Is death the end of our individual and conscious being? Are all of these pleasing sensations, these delightful thoughts and ardent affections, our glowing hopes and our lofty aspirations, our conscious capacities for happiness and knowledge which we feel expanding—are all of these to cease at death and be buried in the grave? If this be true, as Chauncey Giles has well said, 'then man is the greatest enigma in the universe. Compared with the possibilities of his nature, he is the fading flower, the withering grass, the morning cloud, the tale is told.'

"But if death is, as we believe, but the withdrawal of a man's spirit, the real man, from the material body to enter into an endless career of immortality, then is the mystery of man's existence here solved. Life and death form but parts of one grand drama. Death becomes the real step in life by which man ascends in order to attain the fruition of his hopes and aspirations. As has been well said, death is the means by which one acquires the fulfillment of which this life is but a prophecy. Death, my friends, is of the body, not the spirit. To the spirit death means the seed time, the budding time is over, and that the spirit, with all of its faculties alive and increased, will now blossom and bear immortal fruit. Death releases the spirit from the restraints of the material body, enabling it to soar to

lofty heights for which it has so long pined, and to gratify those pure yearnings so long unsatisfied.

"As a writer has well said: 'Death, like the sunset, speaks, but speaks only feebly of the glories of another day.' Toward death we feel like Tennyson, one of England's sweetest poets:

"Nor blame I death because he bare
The use of virtue out of earth,
I know transplanted human worth
Will bloom to profit elsewhere.

"To the wise and pure death opens the shining portals of an endless day, gorgeous with perpetual glories.

"My friends, in conclusion, let us all so conduct our lives that when the time comes for us to depart we can calmly and serenely face death without terror. Let our lives, like that of our beloved friend here, be so replete with good deeds for our fellow man, so full of achievements for humanity that our memory will ever be a blessing and an inspiration to those who shall follow us. Let us follow faithfully the advice given in those beautiful lines of Charles Kingsley:

"Do noble things, not dream them, all day long
And so make life, death, and that vast forever
One grand sweet song."

BELLS FOR HOUSE OF HOPE CHURCH, ST. PAUL, MINN.

Mr. McCUMBER. From the Committee on Finance I report back favorably without amendment the bill (S. 3973) to remit the duty on a carillon of bells to be imported for the House of Hope Church, St. Paul, Minn. I call the attention of the junior Senator from Minnesota [Mr. KELLOGG] to the report. I merely desire to say that we passed a bill in precisely similar terms and for the same purpose for the Church of Our Lady of Good Voyage at Gloucester, Mass., on the 28th day of last February.

Mr. KELLOGG. Mr. President, I ask unanimous consent for the immediate consideration of the bill.

Mr. ROBINSON. Let the bill be read.

The bill was read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to admit free of duty a certain carillon of 28 bells to be imported for the House of Hope Church, St. Paul, Minn.

Mr. KELLOGG. I ask unanimous consent that the bill may be now considered.

The VICE PRESIDENT. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

Mr. FLETCHER. Mr. President, will the Senator from Minnesota explain what the purpose of the bill is?

Mr. KELLOGG. The bill proposes to permit certain bells, which are for a church in St. Paul, Minn., to be imported without the payment of duty. The church is a modest one, without much means, and it is anxious to secure the bells. The bells are very fine, but the church can not afford to pay the duty on them.

Mr. McCUMBER. The bells have been presented to the church, let me suggest to the Senator from Minnesota.

Mr. KELLOGG. I might say that the bells are a present to the church; that it did not buy them, but they were given to it. Of course, however, the church will have to arrange for the importation of the bells.

Mr. FLETCHER. Can the Senator from Minnesota state what the amount of the duty on the bells would be?

Mr. KELLOGG. I do not know whether that information was submitted to the committee or not.

Mr. McCUMBER. I think the amount of the duty would be about \$7,500, and the bells would be worth about \$15,000. I repeat that we passed exactly the same kind of a bill for the benefit of another church in Gloucester, Mass., a very short time ago.

I desire to say, in addition, that the donor of these bells attempted to ascertain whether the same kind of bells could be manufactured at any place in the United States, and he was unable to find a foundry which could make them here. They are imported from Belgium and, as has been stated, they were given to the church.

Mr. ROBINSON. Mr. President, I do not desire to object to the consideration of the bill, but I should like to inquire of the Senator from North Dakota [Mr. McCUMBER] why the general law can not be modified so as to permit the importation free of duty of articles coming within the class that is embraced within this bill, so as to avoid the necessity of frequently legislating in individual cases? It does seem to me as though some general provision of law ought to be enacted which would avoid the necessity for the passage of special bills.

Mr. McCUMBER. I desire to say to the Senator from Arkansas that that could be done; but we had that matter under consideration by the Committee on Finance, and it was

impossible to fix a proper line of demarkation as to what articles should be imported free of duty. By special bills the importation of such articles has only been allowed where there were no profits and where the article desired to be imported was a gift to a church or for charitable purposes.

Mr. ROBINSON. I believe that in every instance—

Mr. CALDER. Mr. President, will the Senator from Arkansas yield to me?

Mr. ROBINSON. I will yield in just a moment. I believe that in every instance where a request is made in such a case the duty has been remitted; and it would seem, if it is the policy of the Government not to tax such articles as are designed for the uses embraced in this bill, that that policy ought to be established in the general law and carried out.

Mr. CALDER. In further response to the inquiry of the Senator from Arkansas, I would advise him that when the present tariff law was passed the subject referred to by the Senator was before the Senate Committee on Finance. On my motion we incorporated a provision in the bill to permit the importation free of duty of altars, communion services, and other articles designed for church use, and works of art generally for church purposes where they were donated. Apparently we did not include chimes or bells, but those were the only articles of which I know which we did not include, and had attention been called to them, perhaps they also might have been included.

Mr. KELLOGG. Those articles were probably omitted by inadvertence, and it is only where such articles have been donated, as they have been in this case, that we ask for legislation permitting them to be imported free of duty.

Mr. KING. Mr. President, it seems to me that this bill ought to go through. I regret that church bells are not on the free list, and I suggest that if the passage of this legislation will induce the distinguished Senator from Minnesota [Mr. KELLOGG] and others to attend church and listen to the beautiful chimes, we ought to be very glad to pass the bill.

Mr. KELLOGG. I think that is a worthy object.

Mr. HARRISON. Mr. President, I have no desire to embarrass the passage of this bill, but I desire to say that since the passage of the last tariff bill the price of sugar has been increased at a very rapid rate, as the Senator has read and realizes. I desire to ask if he would have any objection to having an amendment incorporated in the bill to take off a part of the tariff, which is very high, which in the last tariff bill we imposed upon sugar imported from Cuba?

Of course, if the Senator is opposed to it, I shall not offer the amendment at this time, but shall bide my time before the Committee of Finance.

Mr. KELLOGG. I will say to the Senator that I have reason to believe that if I consented to have considered on this bill the amendment he suggests, the bill for the admission of these bells free of duty would not pass. So I hope the Senator will not press his amendment.

Mr. HARRISON. I shall not press the amendment at this time.

Mr. SMOOT. I desire to say to the Senator from Mississippi that the duty on sugar—on Cuban sugar—was increased 15 cents a hundred pounds, and in Cuba at that time sugar was selling at \$1.67, while now sugar is selling in Cuba for over \$4 a hundred pounds.

Mr. HARRISON. I do not desire during the morning hour to get into a controversy over sugar; but I have an amendment on my desk which I shall offer in due time, and ask to have referred to the Committee on Finance, in the hope that the Senator from Utah will join me in reducing the tariff on sugar in order to meet present-day conditions.

Mr. KELLOGG. Mr. President, I hope that the pending bill may now be passed.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

SALE OF SCHOOL LANDS IN THE DISTRICT.

Mr. BALL. From the Committee on the District of Columbia I report back favorably without amendment the bill (H. R. 5020) to provide for the sale by the Commissioners of the District of Columbia of certain land in the District of Columbia acquired for a school site, and for other purposes. I ask unanimous consent for the immediate consideration of the bill.

Mr. KING. Let the bill be reported.

Mr. ROBINSON. Mr. President, will the Senator explain the bill?

Mr. BALL. Mr. President, a similar bill passed the Senate on May 16, 1921, and the House passed an identical House bill on May 22, 1922, but for some reason did not pass the Senate bill. The measure merely provides for the sale of a

small strip of land which was acquired for school-site purposes in 1869, but which was never used for such purposes. A large portion of the land was utilized for the construction of streets which passed through that section, but there is still a small strip which it is desired to sell, and there are some real estate people who wish to build upon the land.

Mr. ROBINSON. Is any use now being made of the land?

Mr. BALL. None whatever.

Mr. ROBINSON. What use is expected to be made of the land after it shall have been sold?

Mr. BALL. It is intended to sell the land to a real estate company which contemplates erecting buildings on it.

Mr. FLETCHER. Let me ask the Senator what will become of the proceeds?

Mr. BALL. The proceeds will go into the Treasury of the United States.

Mr. FERNALD. I should like to inquire of the Senator if the land in question adjoins property on which school buildings are now located?

Mr. BALL. No; there are no school buildings there now.

The VICE PRESIDENT. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read, as follows:

Be it enacted, etc., That the Commissioners of the District of Columbia be, and they are hereby, authorized to sell at public or private sale, at a price not less than the true value of the abutting property based on the assessment, all that part of the subdivision of Granby acquired by the commissioners of primary schools of Washington County by deed from George H. Baer and wife, dated the 25th day of June, in the year 1869, excepting that part of said land lying within the lines of Twentieth and Jackson Streets, as recorded in book 52, page 174, of the records of the office of the surveyor of the District of Columbia, the land herein authorized to be so conveyed being assessed among the records of the office of the assessor of the District of Columbia as parcel 156 sub 38 and parcel 156 sub 39, reserving, however, so much of said land as is in the judgment of said commissioners necessary for alley purposes, the portion of land so reserved not to be included in said sale: *Provided*, That the entire proceeds of such sale by the said Commissioners of the District of Columbia shall be covered into the Treasury of the United States to the credit of the revenues of the District of Columbia.

Mr. McKELLAR. Mr. President, I have an amendment which I desire to offer to the bill. I will have it prepared in just a moment, if the Senator will give me that opportunity.

Mr. HARRISON. Mr. President, I wish to offer an amendment to the bill, but I do not desire to do so unless the Senator will agree to it. I desire to have the proposed amendment read and I should like to have it incorporated in the bill, if there is no objection, and, if not on this bill, then on some other similar bill. If, however, it would embarrass the passage of the bill, I shall not offer it, but I do not think there will be any opposition to it, and I hope the Senator may accept it.

The VICE PRESIDENT. The amendment proposed by the Senator from Mississippi will be stated.

The READING CLERK. At the proper place in the bill it is proposed to insert the following:

That the Public Utilities Commission of the District of Columbia be, and it is hereby, directed to make full and complete investigation of the rates charged by the owners and operators of taxicabs and automobiles for hire in other cities and in the District of Columbia, and to recommend to the Commissioners of the District of Columbia, for action and enforcement, such rates as may be reasonable and which may compare with such rates as are permitted to be charged by the owners and operators of automobiles and taxicabs for hire in other cities of the United States. That the Commissioners of the District of Columbia shall make full report of the investigation and findings of the Public Utilities Commission on or before the convening of the next regular session of the Sixty-eighth Congress.

Mr. BALL. Mr. President, I have no objection to such a measure as that proposed by the Senator from Mississippi being adopted by the Senate, but I do not think it ought to be made a part of the bill which is now under consideration. It would require some discussion, I imagine.

Mr. HARRISON. Very well; I will withdraw the proposed amendment if the Senator has any objection to it going on this bill.

Mr. McKELLAR. I offer the amendment which I send to the Secretary's desk.

The VICE PRESIDENT. The amendment will be stated.

The READING CLERK. Add at the proper place in the bill the following:

The Public Utilities Commission of the District of Columbia shall not hereafter have or exercise power to fix rates of fare for the street railway companies in the District of Columbia at rates in excess of the rates of fare fixed in existing charters or contracts heretofore entered into between said companies and the Congress, and from and after the passage and approval of this act the said street railway companies shall receive 5 cents per passenger as a cash fare but they shall issue and sell six tickets for 25 cents, as provided in existing charters.

Mr. McKELLAR. Upon that amendment I ask for the yeas and nays.

Mr. UNDERWOOD. Mr. President, the Senator offered a similar amendment here some days ago, but it was not discussed. I do not think a proposition of such importance should be voted on without some information being given.

Mr. McKELLAR. I will be glad to give the Senator any information I have.

Mr. UNDERWOOD. If the Senator will allow me, I should like briefly to state my viewpoint and then I should like to hear from the Senator, because I have an open mind on the question and if the Senator convinces me he is right I will be glad to vote with him; but if not, I will vote against his amendment. I think it is a matter of importance and if there is information available I should like to have it.

Of course, Mr. President, I realize that most of the street railways companies in the United States before the Great War made contracts for a 5-cent fare and carried passengers for a 5-cent fare. In most of the cities of the Union during the war or immediately thereafter the cost of such transportation was increased by the public-service commissions of the various States above the 5-cent rate. As a rule it was impossible for the street railway companies to increase the fares themselves, but they applied either to the local legislatures, the boards of aldermen, or to public-utilities commissions in which the power was vested and obtained the right to charge increased fares. Why? On the ground that the cost of carriage had so greatly increased that the street-railroad companies of America could no longer function unless the cost of service was increased.

Of course, we all know that wages have increased throughout the United States. We all know that the cost of supplies has increased in the United States. We all know that in every walk of life and in every industrial development there has been an increase of cost. We know it ourselves in our grocery bills, in our rent bills, in every cost of living. I know that when Mr. Cleveland was President of the United States and I came here as a young Congressman I was receiving \$5,000 a year to live on. Now the Congressman or the Senator is paid \$7,500; but the purchasing power of the \$5,000 I received at that time was vastly in excess of what I am receiving as a Senator to-day, although there is an increase of \$2,500 in the amount of my compensation; but the purchasing power of the dollar has very greatly decreased. It decreased before the war and it has vastly decreased since the war.

This is the question I am addressing to the Senator from Tennessee, and I am addressing it in good faith, because I really want the information. I really want a reply. With that in view, and knowing the fact that the costs of steam railroad companies, of which we have the statistics, have largely increased, and that all other transportation costs have increased—I mean the costs to the carrier—if I could cast my vote and bring back to 5 cents the cost of transportation to those who ride on the street cars in the District of Columbia without destroying these companies, if they could continue to serve the public for that sum and make a fair return, to which they are entitled, as they did before the war, I should be very glad to do so; but if the increased cost of carriage has put on these companies so great a cost for transportation that they can not do business if we reduce the fare to 5 cents—and that is the question that was decided when the increase was allowed—then I should not feel justified in doing it.

I am not a member of the Committee on the District of Columbia—

Mr. McKELLAR. Nor am I.

Mr. UNDERWOOD. And I have not studied the question. I have not had an opportunity to do so. I have no information in reference to the street-car system here; and I think that if the Senator desires his colleagues who are not informed to vote on his amendment now it will be most serviceable if he will give us the facts.

Mr. McKELLAR. I shall be very glad to give the Senator and the Senate whatever facts I have in my possession.

Mr. UNDERWOOD. I yield the floor to the Senator. I merely wanted to ask a question.

Mr. McKELLAR. If any question arises in the Senator's mind, I hope he will rise and ask it in my time.

The last reports of the street car companies show that there are two street car companies here—the Capital Traction Co. and the Washington Railway & Electric Co. The Senator will recall that when these fares were raised during the war the Capital Traction Co. did not ask for the increase. The Capital Traction Co. was satisfied to continue under its contract, so the papers stated, and so it was generally understood. Statements were made here in the Senate to that effect. By the way, I will say that the last report shows that the Capital Traction Co. made something like 13 per cent, in addition to improve-

ments that it made on its lines, which were admittedly very great. So I think the Senator will assume from that fact that the Capital Traction Co. is making more than a fair return under the present rate of fare.

Mr. McKINLEY. Mr. President, will the Senator yield for a question?

Mr. McKELLAR. Just a minute; let me finish, and then I will yield to any Senator who wants to ask a question.

The Washington Railway & Electric Co. is in a very different situation. It has a number of lines outside of the city. It claims that those lines outside of the city are not paying. It claims that it must have this rate of fare on its lines so as to make its system pay; that if it did not have to carry these lines outside of the District which are not paying, which are a burden upon it, it could get along on the 5-cent fare, as I understand, but that if it is to continue to operate the lines outside of the District it must have an additional fare.

In reference to that company, Senators know that it has been a stock-jobbing company. It is a company that has been exploited a number of times. It has been reorganized, and other lines bought, and stock issued, and my understanding is that the greater part, practically all of the \$6,500,000 of common stock of that company, is watered stock; that the stockholders did not actually pay for it. In my judgment, manifestly the Congress ought not to undertake two things that the Public Utilities Commission now is undertaking to do. One of them is to raise the fares in the District so high that it will make the property of these companies in these outside lines pay. The other is that we ought not to undertake to make these lines return an income on watered stock.

Mr. McKINLEY. Mr. President, will the Senator yield now?

Mr. McKELLAR. I yield to the Senator from Illinois.

Mr. McKINLEY. Is it not true that 10 years ago the wages of the men employed on the local street railways were 18 cents an hour, and to-day they are 56 cents an hour?

Mr. McKELLAR. Yes; and it is also true that these companies carry about that proportion of increase in passengers over the number that they carried 10 years ago.

Mr. McKINLEY. Is it not also true that the cost of coal to-day is double what it was 10 years ago?

Mr. McKELLAR. Yes; and it is also true that the number of passengers carried has more than doubled. Washington has grown, as we all know, and the number of passengers has enormously increased, and it has increased more than the cost of materials and labor.

I want to yield now to the chairman of the District Committee.

Mr. BALL. Mr. President, I should like to ask the junior Senator from Tennessee where he got his data that the Capital Traction Co. earned 13 per cent during the last year. I have here the report of that company, and I do not find those figures.

Mr. McKELLAR. I got them from a statement published in the Washington Post, I think, some time in January. The company made a report that was published, and, as I recall the figures—I put them in the RECORD at the time—they were 13 per cent. They were either 13 per cent plus or 13 per cent minus. They were about 13 per cent.

Mr. BALL. My recollection is—I can not find the figures just at this moment—

Mr. McKELLAR. I had them before me, and put them in at the time. I talked about them at the time.

Mr. BALL. My recollection is that the Capital Traction Co. earned between 7 and 8 per cent, and that the Washington Railway & Electric Co. earned between 3 and 4 per cent; but on the basis of a 5-cent fare, Mr. President, the returns of last year would not pay the operating expenses of the Washington Railway & Electric Co.

Mr. PITTMAN. Mr. President—

Mr. BALL. I should like to finish this statement. It makes no difference as to whether it is watered stock or what it is; if the income at 5 cents would not pay the operating expenses, it is paying nothing on the investment anyhow.

Mr. McKELLAR. Mr. President, will the Senator just allow me to say this, and then I will yield, because I want this matter fully discussed?

Mr. PITTMAN. I simply wanted to ask a question.

Mr. McKELLAR. I just want to say to the Senator from Delaware that I do not conceive it to be the duty of Congress to raise fares high enough to give any concern, regardless of management, a reasonable income on the amount invested. Let us look at it a minute.

Here in New York the companies have operated all during the war and up to this time on a 5-cent fare, and I understand that they are in the hands of a receiver. I understand that

the companies in Pittsburgh, where they raised the fares to 10 cents, are in the hands of a receiver. In the city of Memphis, where I come from, they raised the fare to 7 cents, and they are in the hands of a receiver. Why? Because they can not make money on watered stock; and that is the position of the Washington Railway & Electric Co. Is it right and fair for Congress to undertake to make a company earn money to which it is not entitled?

I now yield to the Senator from Delaware.

Mr. BALL. Mr. President, the valuation of the property of each of the street-railway companies in Washington has been fixed by an expert commission. It is not a question of the stock issued by those companies—watered stock, as the Senator terms it—but an expert commission have fixed the valuation of the property of each of the companies, and it is that valuation that the commission consider in fixing the rates.

Mr. McKELLAR. Oh, yes, Mr. President; we know exactly how that is. Everybody knows that valuation is a matter of opinion. For instance, the steam railroads of the country have stock issues—and we all know that many of them are watered—of something like \$16,000,000,000, as I recall, and yet a valuation of something like nineteen or twenty billion dollars has been put upon their property.

Mr. BALL. Mr. President, I should like to ask the Senator from Tennessee one question.

Mr. McKELLAR. I shall be delighted to answer it if I know how.

Mr. BALL. While Congress has a legal right to fix a rate, does the Senator consider that Congress has a moral right, merely because it has the power, to confiscate the property of individual stockholders because they invest their money in a street-car line and operate it in the city of Washington?

Mr. McKELLAR. Oh, no, Mr. President; I do not contend any such thing. The fact is that the stockholders whom the Senator from Delaware talks about are principally the holders of watered stock, and I say that it is not the duty of Congress to legislate so as to give these gentlemen returns on money that they have never invested. That is my contention; and I want to say another thing right here and now: These companies have a contract with the Congress. They entered into it voluntarily. They are claiming every right that they have under that contract. They have not yielded one jot or one tittle they secured from the Government under that contract, and yet they are asking the Government to let them violate those provisions of the contract which are favorable to the Government and favorable to the people of this District.

Mr. CURTIS. Mr. President—

The VICE PRESIDENT. Does the Senator from Tennessee yield to the Senator from Kansas?

Mr. McKELLAR. I yield.

Mr. CURTIS. I rise to a question of order. Has unanimous consent been given for the consideration of this bill?

Mr. McKELLAR. Yes; unanimous consent has been given.

The VICE PRESIDENT. Unanimous consent was granted.

Mr. CURTIS. Under the rule, is not debate limited to five minutes?

The VICE PRESIDENT. The Chair does not understand that it is when unanimous consent is given.

Mr. DIAL. Mr. President—

Mr. McKELLAR. I yield to the Senator from South Carolina.

Mr. DIAL. I would like to ask the Senator whether the question of granting a zone fare by either company has been considered?

Mr. McKELLAR. I do not know.

Mr. DIAL. What would be the Senator's opinion about that?

Mr. McKELLAR. I think the first thing we should do would be to require the companies to live up to their contract, because the Public Utilities Commission has no legal or moral right to permit them to violate the contract. The contract was honorably made. The consideration has passed.

Congress has given to these companies the consideration they were asked to give for the 5-cent fares, 6 tickets for 25 cents. That having taken place, before they should ask anything further from us, they should live up to the contracts they voluntarily made. They made the contracts. They felt that they could carry passengers at 5 cents; and they can. One of the companies has never asked that the fares be increased. It is only for the other company, which has watered stock, and has these outside ventures, outside of the District.

Mr. DIAL. I presume, then, if Congress had known the company were not going to live up to the contract, it would not have granted the charter, and we would have had only one company which would have lived up to the contract.

Mr. McKELLAR. Certainly.

Mr. McCUMBER and Mr. SMOOT addressed the Chair.

The VICE PRESIDENT. Does the Senator from Tennessee yield; and if so, to whom?

Mr. McKELLAR. I believe the Senator from North Dakota rose first, and I will yield to him first.

Mr. McCUMBER. The Senator from Tennessee has made a very interesting statement, namely, that the fare in Pittsburgh is 10 cents—

Mr. McKELLAR. I was so informed. I stated it was on information that I made the statement.

Mr. McCUMBER. I am assuming that the information is correct, and that the fare in the Senator's own city is 7 cents—

Mr. McKELLAR. And both companies, I understand, are in the hands of receivers.

Mr. McCUMBER. The Senator says the reason why they are in the hands of receivers is on account of watered stock. I can not imagine how a company can go into the hands of a receiver, whether it pays a cent on any stock or not, so long as its income exceeds its expenses, and it is able to meet its debts as they become due. It does seem to me that if they are in the hands of receivers, it must be because 10 cents and 7 cents, respectively, do not pay their running expenses.

Mr. McKELLAR. I can not speak for the Pittsburgh company, but I can speak for the Memphis company.

Mr. REED of Pennsylvania. Mr. President—

Mr. McKELLAR. I will yield to the Senator in a minute. Every two or three years in Memphis there is a reorganization of the street-car company, and they issue additional bonds, as well as additional stock, with the result that they can not pay the interest on the bonds, and therefore they have had to go into the hands of a receiver.

Mr. SMOOT. No company would issue bonds to pay a dividend; in fact, it would not be allowed.

Mr. McKELLAR. I do not know what they issue bonds for.

Mr. SMOOT. They issue them to pay their debts.

Mr. McKELLAR. I have my doubts about whether they are always issued for proper purposes.

Mr. SMOOT. Does the Senator deny the fact that the actual cost to the street railways in this District for carrying each passenger is 6.2 cents?

Mr. McKELLAR. Of course, I do. Of course, that is not the case. It could not be. Both these companies would be in the hands of receivers if it were true, because that is all they are getting.

Mr. SMOOT. No; it is not all they are getting.

Mr. McKELLAR. Practically all, because passengers use the tokens in almost every instance. There are very few cash fares paid. Just look at the street cars any time you wish. The Senator from Utah may not travel on the street cars, but I do.

Mr. SMOOT. So does the Senator from Utah.

Mr. McKELLAR. In 99 cases out of 100 tokens are used instead of cash fares, because that means a fare of 6½ cents required of each passenger for every ride.

Mr. SMOOT. I said 6.2 cents.

Mr. McKELLAR. I yield now to the Senator from Pennsylvania, who has been waiting for me to yield for some time.

Mr. BALL. Mr. President, we are taking so much time on the amendment that I ask that the bill go back to the calendar.

Mr. FERNALD. I hope the Senator will not withdraw the bill. It is a very interesting matter. I shall have something to say about it later.

Mr. McKELLAR. I make a point of order that the Senator has no power to withdraw a bill after it is before the Senate by unanimous consent. I have the floor, and I object to that course.

Mr. REED of Pennsylvania. Mr. President, will the Senator now yield to me?

Mr. McKELLAR. I yield to the Senator from Pennsylvania.

Mr. REED of Pennsylvania. Merely to correct misinformation which I think has been given to the Senator, permit me to state that the fare in Pittsburgh is not 10 cents, and never has been.

Mr. McKELLAR. Will the Senator state what it is? I have been misinformed, possibly.

Mr. REED of Pennsylvania. It was 5 cents. The company went into the hands of a receiver. It had never paid any dividends while the fare was 5 cents. The receivers secured permission to raise the fare to three tickets for a quarter. The receivers have now applied to be dismissed, because the company is again solvent. The receivers have accumulated a fund.

Mr. McKELLAR. The fare is 8½ cents?

Mr. REED of Pennsylvania. Eight and one-third cents.

Mr. McKELLAR. I am much obliged to the Senator. As I said in the beginning, I was informed that the fare in Pitts-

burgh was 10 cents. Permit me to ask the Senator a question on that subject, just in order to get the information straight. Three tickets are sold for a quarter; and if it is paid in cash, the fare is 10 cents.

Mr. REED of Pennsylvania. That is correct.

Mr. McKELLAR. Then my informant was correct. If there are other Senators who want to ask me any other questions on this subject, I will be glad to answer them.

Mr. FERNALD. Mr. President—

The VICE PRESIDENT. Does the Senator from Tennessee yield to the Senator from Maine?

Mr. McKELLAR. I yield to the Senator.

Mr. FERNALD. I wanted to ask the Senator a question. In speaking of watered stock, if a company were not able to pay its running expenses would it make any difference whether its capitalization was \$10,000,000 or \$10,000,000,000?

Mr. McKELLAR. That raises a question which some one else raised a few moments ago. It depends on circumstances. As a rule when a company is reorganized, without additional money being put in, they do two things; they issue so many bonds and they issue so much stock to go along with the bonds, and they do not get the full value of the bonds; they have to sell them at a discount; but they have to pay interest on them at par, and it is very, very difficult for some of the companies which have been thus manipulated time after time to earn enough money to pay the interest on their outstanding bonds, and that is why they get into trouble. That is why they get into such trouble as the Washington Railway & Electric Co. is in and has been in for some time, and as the Memphis street railway has been in. They have been issuing bonds and stock together, and the purchasers of the bonds get stock. It is just another way of earning dividends, or attempting to earn dividends, on watered stock and fixing the salaries of officers, as has been suggested by a Senator.

Mr. COUZENS. The Senator referred to contracts the street railway companies have. When do the contracts expire?

Mr. McKELLAR. I thought I had them here, but I will have to get them and put in the Record a statement as to the time they expire. Contracts have been entered into with the various companies which compose the Washington Railway & Electric Co., and also the Capital Traction Co., under which large grants of important rights, of the right to occupy the streets of Washington, of the right to use other public property of Washington, have been granted, and the consideration for those rights was the agreement of the companies to charge a 5-cent fare and give six tickets for 25 cents. The city of Washington is living up to its agreement, and the company is holding the city of Washington to every right, and using every right that was conferred in that contract, and simply wants to avoid its duty by going before a utilities commission and have given to them the specific right to disregard the consideration.

Mr. SMITH. Does the Senator recall whether or not the city of Washington demanded any money consideration for the franchise for the use of its streets?

Mr. McKELLAR. It demanded none at all.

Mr. SMITH. It was a gift?

Mr. McKELLAR. It was a consideration for granting 5-cent fares. By the way, I want to say to the Senator that the public utilities commission act, which was passed, I believe, in 1911 or 1912, was not passed for the purpose of allowing these companies to raise their fares. The express purpose of that act, as stated here on this floor and in the other House, was to make the companies lower the fares and to grant universal transfers. It was held out that the utilities commission would bring about a system of universal transfers in the city, and that was one of the reasons urged for the passage of the act. It was never contended at all that this utilities commission would have the right to disregard the contract which had been made as to 5-cent fares.

Mr. SMITH. What I wanted to get clear was that the franchise granted this street car company provided that in view of certain concessions on the part of the city, they were to do certain things under that contract, and amongst them grant a 5-cent fare.

Mr. McKELLAR. That is right.

Mr. SMITH. They were given the almost priceless privilege of utilizing and monopolizing certain thoroughfares in this city for the carrying of passengers, which means cutting out competition in that territory.

Mr. McKELLAR. Will the Senator stop there long enough for me to say that I understand the Public Utilities Commission will not permit a bus line to operate on any streets so as to bring it in competition with these street car companies? It has gone that far.

Mr. SMITH. I was coming to that very point, and I would like to have the Senator enlarge on that, because those of us who are members of the Committee on Interstate Commerce have this problem presented to us, that under the rules laid down by the Interstate Commerce Commission the rates, fares, and charges should be uniform within a given territory. We have found that certain railroads running through territory where their cars, both passenger and freight, were carrying about the capacity of the road, were making under a given fare a splendid return, while other roads in the same territory were not carrying capacity, and under the fare were making hardly more than current expenses.

In this instance we find within a given territory no competing line. The population has increased by leaps and bounds. The cars are filled almost to capacity, without any cost to the company for the use of the right of way. Shutting out competition even by bus lines, with the increase of business due to the fact that their cars run through the populous sections of our city, has there been an increase of expense in the way of overhead charges to justify an increase in the charge for service of something like 50 per cent, from 5 cents to 7½ or to 8 cents?

Mr. McKELLAR. Mr. President, the increase in the number of passengers has been as great as the increase in wages and the cost of material, and, as I understand, the Capital Traction Co. is perfectly willing to go back to its contract fares—at all events, it has never complained about the franchise fare.

It has never asked to have the fares raised, and my understanding is that the Washington Railway & Electric Co. say they could get along on a 5-cent fare if it were not for the subsidiary lines outside of the District. Surely we should not legislate compensation into the pockets of the company simply because they own lines outside of the District.

Mr. SMITH. This is a matter which comes under our jurisdiction, and, of course, we ought to be thoroughly informed of the facts. We do not want to do any injury to a public utility such as a street railway company. Has there been a thorough investigation by a competent committee of experts, taking the books and the returns and the actual expenditures of the concern, and the income by days, by months, and by years, to arrive at a balance of debits and credits?

Mr. McKELLAR. Mr. President, there has not been such an examination, but surely, while such an investigation was pending, the Senator would not want to allow these companies to violate their contracts while they were exercising all the rights under the contracts?

Mr. SMITH. No; I do not think they ought to be allowed to do that, but I think we ought to have full information as to whether the present rate of fares is justifiable. If they are actually compelled to spend an amount of money that would absorb the present fares on the cars, the public then would have no right to object even to a modification of the contract, if they still desired street car service, because they could not expect a company to serve them at a loss.

Now, the question for us to decide is whether the increased volume of business on these roads has not discounted any increase that they might ask, and that they could carry the increased volume of passengers to-day at a lower rate, because it does not cost them any more to carry a full car than it does an empty car, or appreciably no more. They use the very same equipment and have the same manual service for a full car, which costs no more than an empty car going over a given mileage of track. These are matters of vital importance. It is my opinion that the increased volume of traffic within the city limits or within the limits of the District of Columbia has been sufficient to justify a 5-cent fare under the contract.

Mr. McNARY and Mr. FERNALD addressed the Chair.

The VICE PRESIDENT. Does the Senator from Tennessee yield; and if so, to whom?

Mr. McKELLAR. I think the Senator from Oregon tried to attract my attention before. So I yield first to him.

Mr. McNARY. It is quite obvious that we can not regulate street-car fares during the morning hour. There are a number of important measures on the calendar which ought to receive our attention—

Mr. McKELLAR. I thought the Senator was going to discuss the matter now before us. I do not yield to the Senator to make a motion. I decline to yield to permit him to make a motion.

Mr. FERNALD. I can not agree with my friend from Oregon.

Mr. McNARY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state the inquiry.

Mr. McNARY. I would like to know from the Chair if it is in order to make a motion to lay the amendment of the Senator from Tennessee on the table?

Mr. McKELLAR. Not while I have the floor, and I decline to yield to the Senator for that purpose.

The VICE PRESIDENT. The Senator from Tennessee has the floor and declines to yield for that purpose.

Mr. McKELLAR. I yielded for a question only. I now yield to the Senator from Maine [Mr. FERNALD] for a question.

Mr. FERNALD. I want to say that I am very greatly interested in what the Senator from Tennessee has had to say, and I can not agree with my friend from Oregon. I believe we may be able to settle this question.

Mr. McKELLAR. I hope so.

Mr. FERNALD. In reply to the statement I made a few moments ago, the Senator from Tennessee stated that it was on account of the large issue of bonds and stocks, as I understood.

Mr. McKELLAR. I can not say that that is true in every case, but it is very often the case.

Mr. FERNALD. Yes; in many cases.

Mr. McKELLAR. Yes; I have known corporations to issue so many bonds that they could not pay interest on them.

Mr. FERNALD. I wanted to state to the Senator, because I know he desires to be exceedingly fair in the matter—

Mr. McKELLAR. Of course I do.

Mr. FERNALD. I am sure he does. The interest on the bonds and the dividends on the stock and the taxes do not enter into the operating expenses of a railroad.

Mr. McKELLAR. They are so charged in ordinary book-keeping.

Mr. FERNALD. No; not as a part of the operating expenses. I am not a lawyer and would not undertake to discuss the legal questions involved, but I recall very well a decision by the Interstate Commerce Commission that the operating expenses of a railroad should not include interest on bonds, and so forth.

Mr. McKELLAR. I do not think many corporations are put into the hands of receivers where they are paying interest on their bonded indebtedness and their taxes.

Mr. FERNALD. If the Senator will allow me to finish—

Mr. McKELLAR. Certainly.

Mr. FERNALD. My original statement was that in the operating expenses it would not make any difference whether the capitalization was \$10,000,000 or \$10,000,000,000, if they were not able to pay operating expenses. That has nothing to do with it whatever.

Mr. BROOKHART. Mr. President—

Mr. McKELLAR. I am much obliged to the Senator from Maine for his contribution. I yield to the Senator from Iowa.

Mr. BROOKHART. I understood the Senator from Maine to state that there may be watered bonds as well as watered stock. I know of a railroad company that has watered stock and watered bonds and watered operating expenses, all of them watered, and the president called me a Bolshevik because I found it out.

Mr. McKELLAR. I am discussing this particular question. I think frequently corporations pay their officers too great salaries and of course they are charged to operating expenses.

Mr. HARRISON. Mr. President, will the Senator yield?

Mr. McKELLAR. Certainly.

Mr. HARRISON. I did not understand the Senator from Iowa. Did he say the President had called him a Bolshevik?

Mr. BROOKHART. The president of the railroad company to which I referred.

Mr. HARRISON. Oh, I got the railroad president confused with the President of the United States.

Mr. McKELLAR. Oh, no; I understood the Senator from Iowa to mean the president of the railroad company to which he referred.

Mr. CALDER. Mr. President—

Mr. McKELLAR. I yield to the Senator from New York.

Mr. CALDER. May I inquire of the Senator from Tennessee whether he has ever introduced a bill for the purpose of bringing about the purpose desired by his amendment?

Mr. McKELLAR. No; but I have introduced a number of amendments to effect that purpose.

Mr. CALDER. I thought the matter might have been investigated by a committee of the Senate.

Mr. McKELLAR. I understand the Committee on the District of Columbia, before which any bill would go, is practically unanimously opposed, or very largely opposed, to my proposition. So it would be a useless or vain thing to introduce a bill when I would know in advance I would either get an adverse report or none at all.

Mr. CALDER. As I understand it, the subject has never been before the District Committee or any other committee of the Senate.

Mr. McKELLAR. It ought to have been. I am surprised that a subject so important as the question of an 8-cent cash fare has not been before the District Committee. I asked the

chairman of the District Committee if his committee had ever discussed it, and he said no.

Mr. CALDER. What I had in mind, I will say to the Senator, was that we are apparently attempting to legislate on a question of great interest to the people of the District and to the people of the country—

Mr. McKELLAR. I think Senators know about it.

Mr. CALDER. And in which the railroads have some rights, and we do that without any first-hand intimate knowledge of the subject.

Mr. McKELLAR. Oh, the Senator can not make that statement. He surely desires to modify it, I know. The street car companies have contracts with the Government for 5-cent fares or six tickets for a quarter in the District of Columbia. They know it themselves. They have certified to the Congress that that was a reasonable and proper fare.

Mr. CALDER. And then the Public Service Commission of the District of Columbia, after hearings and after investigating the subject of rates, decided that they should have an 8-cent fare.

Mr. McKELLAR. Yes; we all understand that the Public Service Commission has done that.

Mr. CALDER. We have already voted on the Senator's proposition of a 5-cent fare, and, of course, we may have a second vote on it.

Mr. McKELLAR. The Senator does not object to voting on it, I am sure. I shall be very glad to have a vote on it.

Mr. CALDER. We could vote on it in the proper way in the Senate if a bill were introduced for that specific purpose.

Mr. FRELINGHUYSEN. Mr. President—

Mr. McKELLAR. I yield to the Senator for a question.

Mr. FRELINGHUYSEN. I do not want to ask a question. I want to appeal to the Senator, if he will not allow us to vote on this question—

Mr. McKELLAR. Yes; unless some other Senator wants to ask me a question.

Mr. FRELINGHUYSEN. But I have not finished. There are a number of bills on the calendar in which some of us are interested.

Mr. McKELLAR. The Senator is right about that. I am perfectly willing to take a vote as soon as we may properly do so.

Mr. FRELINGHUYSEN. We ought to vote. I am appealing to the Senator if he will not give us an opportunity to vote, so that we may take up some of the other bills on the calendar in which some of us are greatly interested.

Mr. McKELLAR. Oh, yes; I am willing to do that. I suggest to the Senator that if we lay aside the shipping bill we would have ample opportunity to vote on all these measures.

Mr. PITTMAN. Mr. President—

Mr. McKELLAR. I will say to the Senator from New Jersey that just as soon as I have yielded to the Senator from Nevada and any other Senator who may desire to ask me a question I am ready for a vote. I yield now to the Senator from Nevada.

Mr. PITTMAN. I merely want to get a little information in addition to what I already have. I would like to ask the chairman of the District Committee, for the information of the Senate, if there has been any consideration by that committee looking to a reduction of fares on the street car lines of the District?

Mr. BALL. There has been.

Mr. PITTMAN. Has the committee made any recommendations either to the street car companies or to Congress relative to the matter?

Mr. BALL. It has introduced, considered, reported to the Senate, and the Senate has passed certain bills which the committee believe will materially reduce the fares and still enable the companies to live.

Mr. PITTMAN. What is that general plan, briefly stated?

Mr. BALL. It would repeal the law at present forbidding the merging of the companies. The committee believe that if all the trolley lines and bus lines of the District were under one management, under one head, they would be enabled to give very much better accommodation at a less cost to the citizens of Washington. For the accomplishment of that purpose we have introduced and the Senate has passed a bill, which has now been reported in the House, authorizing such a merger, and there is another bill following that measure providing that if the companies fail to merge within a certain length of time they may, in a measure, be compelled to do so.

Mr. PITTMAN. If the committee has discovered a method by which the expenses of the transportation companies may be reduced, why would it not be a good idea to add it as an amendment to the pending bill in the words of the bill which

has already passed the Senate and to which the Senator has just referred, and pass them both at once? The Senator has said the bill passed the Senate, but it has not yet passed the House. We do not know whether it will pass the House. If it does pass the House, I assume from statements there that they would be able to operate their roads on a 5-cent fare, but there is nothing to compel them to operate the lines on 5-cent fare, even though we pass a bill which would reduce their operating expenses.

Mr. McKELLAR. I think that suggestion is a very wise one, because unless there is such a provision in the merger legislation which has already passed the Senate it would not become a law at this session of Congress.

Mr. BALL. I would like to make one statement, and then I shall take no more time. The first necessary step for merging the street railway companies is the ascertainment of the real value of the two companies. That matter now is in the Supreme Court, which is to decide whether the expert valuation fixed by the commission is a fair and just valuation of each company. The decision is expected shortly. I do not know just when we shall get the report on the valuation. With a reasonable valuation of each company, I think that shortly we would have but one company in Washington.

The Washington Railway & Electric Co. also own the electric-light plant. While they own every share of that stock, they are prohibited by a law enacted by Congress from merging with that company and forming one company. The bill which we have reported and which the Senate has passed provides for the repeal of the acts which prohibit the formation of one company through the process of merging two or more of the companies. I do not know whether we can get a 5-cent fare bill enacted that would enable the companies to live, but I am sure we can get much less than an 8-cent fare. Of course, in order to provide for the proper extension of lines and proper service we shall have to allow the railway companies a reasonable charge.

Mr. PITTMAN. Mr. President, may I ask the Senator from Delaware if it is not a fact that the Washington Electric Light Co. is making a good profit on the electric-light plant which it owns?

Mr. BALL. That is true.

Mr. PITTMAN. The same stockholders are making a profit on that stock?

Mr. BALL. But I would like to state further that they are not getting the surplus charge. That is to say, they are only permitted by the Public Utilities Commission to receive 7.75 cents per kilowatt hour, while the people are actually paying 10 cents per kilowatt hour. But the difference between the two is in a fund of which the court at present has control, and when a decision is reached in the matter that fund will either be refunded to the people or retained by the company on the basis that 10 cents is a reasonable charge.

Mr. PITTMAN. I was on a special committee of the Senate a number of years ago that investigated the situation. The evidence then laid before the committee caused them to conclude that there was a considerable paralleling of the lines of railways in this city, which was an economic waste.

Mr. BALL. That is the very reason why we want but one company.

Mr. PITTMAN. I agree that is the situation, but whenever we provide by law to eliminate this waste and give a monopoly to one company, it should be done under the strictest control with regard to fares. That bill has been passed through the Senate. It has been reported to the House, I understand. It will probably pass the House, will it not?

Mr. BALL. I hope so.

Mr. PITTMAN. If it does pass the House and becomes a law, now is the time to say that having benefited their private stockholders by eliminating all of this waste, by allowing them to consolidate all of their money-making instrumentalities, we are of the opinion that, having been granted those rights, they should be able to operate upon the basis of a reasonable rate, or a 5-cent fare. Such a provision should be enacted either before or simultaneously with that measure. Otherwise no one except the stockholders will get any benefit from the passage of the act. I insist, under the statement of the chairman of this committee, that this amendment should be adopted.

Mr. BALL. Mr. President, if the members of the Public Utilities Commission are not honestly and properly performing their duties, the proper way to proceed is for Congress to create a new Public Utilities Commission. There is a bill, I think, before the committee now for that purpose. Competition always increases cost of operation; without competition the lowest cost of service is obtained. The Public Utilities Commission stands between the people and the companies, to

see that the companies are protected and that the people also are protected.

Mr. McKELLAR. The Public Utilities Commission certainly stands in a position to see that the companies are protected, but I very much doubt whether the present Public Utilities Commission of the District of Columbia has the slightest regard for the people of the District.

Mr. COUZENS and Mr. CURTIS addressed the Chair.

Mr. McKELLAR. I will yield first to the Senator from Michigan and I will yield to the Senator from Kansas in a moment.

Mr. CURTIS. I shall ask to be recognized after the Senator from Michigan shall have concluded.

Mr. COUZENS. I will ask the Senator from Tennessee, is it not true that we have heard a good deal on the floor of the Senate about the sacredness of contracts?

Mr. McKELLAR. We have heard a great deal recently about the sacredness of contracts, in which I very heartily concur, for I myself am a believer in the sacredness of contracts, I will say to the Senator from Michigan.

Mr. COUZENS. But does it not appear that the question of the sacredness of contracts is always raised on the side of the public utilities?

Mr. McKELLAR. Yes; in these matters I think that is so.

Mr. COUZENS. I see from last evening's Washington Star one of the District Commissioners wrote a paper which was read at the mid-year conference of the American Electric Railway Association. The article in the Star states:

Human beings, otherwise reasonable, seem to take "a most unreasonable attitude in regard to public utility companies, especially street-car companies," Engineer Commissioner Keller, chairman of the Public Utilities Commission of the District of Columbia, declared in a paper read at the mid-year conference of the American Electric Railway Association to-day at the New Willard Hotel. Commissioner Keller wrote the conference that he was ill, but sent the paper to be read to the meeting.

This mental attitude, hard as it is to explain, Commissioner Keller said, is exaggerated by the "demagogue whose stock in trade it is to attack public utility rates without reference to their fundamental fairness."

In other words, I desire to ask the Senator from Tennessee, is it not true that the "fairness" is not in the interest of the car riders of the District of Columbia, who years ago made a contract in which they, as citizens, gave to these companies, through Congress, an exclusive monopoly, in consideration of which they were to have a 5-cent fare? Now, over a great period of years the records show that these companies under that contract made millions and millions of dollars, for in 1919 the Public Utilities Commission of the District criticized one of the companies for issuing \$5,000,000 worth of stock without any physical value back of the stock. Then they proceeded to earn under the contract which the District had given them a return on that stock.

It is true, as the Senator from Maine [Mr. FERNALD] has said, that it does not make any difference whether there is watered stock or any other kind of stock, so long as the rate is based upon the physical value of the property rather than upon the stock issues; but I desire to point out that Congress did not require the companies to break their contract at that time and reduce the rate because of those exorbitant earnings. If they had attempted such a thing there would have been a procedure resorted to prohibiting Congress from interfering with the rights of contract.

Mr. McKELLAR. In other words, there would have been filed a bill in equity to enjoin somebody from interfering with the obligation of contracts. Of course, the Senator from Michigan is correct.

Mr. COUZENS. Yes; and the court would probably have intervened and said the company had a right to enjoin any interference with the contract. Now, after having made millions of dollars of profits—and I do not object to their having done so, so long as they have a good contract—

Mr. McKELLAR. Surely not.

Mr. COUZENS. But now when the tables are reversed and the companies are asked to lose some money temporarily, because of unusual conditions—

Mr. McKELLAR. Oh, Mr. President, I think the Senator from Michigan is mistaken there. I do not think the companies will lose any money. I believe that the street-car companies in the District, if they are properly managed, will make more money under a 5-cent fare than they will under the fares which they are now charging.

Mr. COUZENS. It has been proven in Boston and other places that rates of fare may be so high that they decrease street-car traffic, and that the net result has been worse than before the fares were increased.

Mr. McKELLAR. Certainly.

Mr. COUZENS. So that it seems to me that the Public Utilities Commission and Congress should put the street railway companies on their mettle and make them live up to their contracts. They might well do that in view of the enormous earnings made in previous years. While, as one Senator has suggested, a thorough investigation might be made and probably a bill be passed in which not only the rates might be regulated but the expenses of operation also might be regulated. As I understand, there is no provision in the law whereby expenses of operation may be regulated, either as to salaries or purchases of supplies or anything else. So it seems to me it is the duty of Congress to adopt the amendment which has been proposed by the Senator from Tennessee in order that the street-car companies may be put on their mettle. Then, after the experience of conducting their business on the basis of their contracts, we might determine whether or not they were entitled to some relief. They might not even be entitled to very much relief if they would use some of the enormous profits which they have earned in previous years.

I only speak of this because I hope that the Senate will indorse the amendment which has been proposed by the Senator from Tennessee, so that we may get at the real facts in the case, for it is quite evident that the Commissioner of the District of Columbia who has charge of this matter is not in sympathy with any reduction in fares, but that he rather criticizes as a demagogue anyone who suggests that the Public Utilities Commission might be wrong and that the people of the District of Columbia might be entitled to a reduction in fares.

Mr. McKELLAR. Mr. President, I thank the Senator for his splendid contribution to this debate, and I think his argument is unanswerable.

Mr. CURTIS. Mr. President, I rise to a question of order.

The VICE PRESIDENT. The Senator will state his point of order.

Mr. CURTIS. A few moments ago I submitted a parliamentary inquiry to the Presiding Officer. I asked if debate was in order under the rules of the Senate during the morning hour. The Chair stated it was his opinion, inasmuch as unanimous consent had been given, that debate was in order. I wish to call attention to a ruling of Vice President Marshall found in the CONGRESSIONAL RECORD of May 1, 1918, at page 877, from which I read:

Mr. SMOOT. I submit a resolution and ask for its consideration.

The resolution (S. Res. 70) was read as follows:

The VICE PRESIDENT. The Senator from Utah asks for the immediate consideration of the resolution. Is there objection?
The Chair hears none.

Mr. OVERMAN. Mr. President, I suppose I can rise to discuss the resolution. I was about, before concluding my remarks, to read from the report of the Economy Commission. I will just go on with my remarks on that matter.

Mr. LODGE. Mr. President, I think under paragraph 3 of Rule VII debate is not in order. The rule provides that—

"Until the morning business shall have been concluded, and so announced from the chair, or until the hour of 1 o'clock has arrived, no motion to proceed to the consideration of any bill, resolution, report of a committee, or other subject upon the calendar shall be entertained by the Presiding Officer, unless by unanimous consent; and if such consent is given—"

Which has happened in this case—
"the motion shall not be subject to amendment and shall be decided without debate upon the merits of the subject proposed to be taken up."

I make the point of order that debate is not in order under that rule.

Mr. OVERMAN. Has unanimous consent been given for the consideration of the resolution?

The VICE PRESIDENT. It has.

Mr. OVERMAN. It is then before the Senate and is debatable.

Mr. LODGE. At this stage of the proceedings debate is not in order. It is open to the Senator to object, of course.

Mr. OVERMAN. If it is before the Senate by unanimous consent, then I have a right to debate it.

Mr. PENROSE. Not under the rule.

Mr. LODGE. Not under the rule I have read.

Mr. OVERMAN. It seems that Senators do not want to hear the truth. I will bring it out at another time. I give that notice.

The VICE PRESIDENT. The point of order is well taken. The question is on agreeing to the resolution submitted by the Senator from Utah.

Mr. UNDERWOOD. Mr. President, may I ask the Senator a question?

Mr. CURTIS. I yield.

Mr. UNDERWOOD. Was that before or after the first hour of the day's session had expired?

Mr. CURTIS. I was going to refer to that. The Senate met this morning at 11 o'clock, and it is now after 12 o'clock; but I raised the question before 12 o'clock. The Chair said he was of the opinion that debate was in order. I wanted simply to keep the record straight. I am not raising the question now, as it is after 12 o'clock, and I think after one hour has elapsed from the beginning of the session the question is debatable. I merely wanted the RECORD to show that the decision had been rendered

that debate was not in order before 1 o'clock. I hope in the future the Senators will observe the rule. This morning we will hardly conclude the presentation of petitions and memorials and other ordinary routine morning business before the morning hour has elapsed, although an adjournment was taken last evening in order that some business might be transacted this morning.

Mr. POMERENE. Mr. President—

Mr. McKELLAR. I yield to the Senator from Ohio.

Mr. POMERENE. Mr. President, it seems that the pending measure is going to take some considerable time. I have a very important committee engagement which I must go to fulfill. I have a small private bill here which I think ought to be passed. It has been favorably reported by the committee; and if the bill is to be passed at all, it must be acted upon very soon. I should like to ask unanimous consent to have the bill considered now.

Mr. McKELLAR. I can not yield for that purpose.

Mr. POMERENE. I think there will be no debate on the bill.

Mr. McKELLAR. But the pending bill has been taken up by unanimous consent, and I do not believe we could make another unanimous-consent order without interfering with the one under which we are now proceeding, and I object to any such request for unanimous consent.

Mr. POMERENE. Very well, if the Senator objects I will bring the matter up at another time, as I am obliged to leave the Chamber now.

Mr. McKELLAR. I am very sorry to be compelled to object, for I should like to accommodate the Senator. If no other Senator has any questions to ask, I shall be very glad indeed now to have a vote on the amendment. I ask for the yeas and nays, Mr. President.

The yeas and nays were ordered.

Mr. DIAL. Mr. President, this is about as important a matter as could occupy the attention of the Senate. We have a couple of weeks yet before the end of the session, and I think we can pass all needed legislation in that time.

Mr. President, I must say that I am not thoroughly in sympathy with the fixing of fares by Congress. I do not know whether we have sufficient facts before us to enable us to do that properly or not. I question it; but I fully appreciate the motive of the Senator from Tennessee [Mr. McKELLAR] in pressing this matter. Personally, I feel very kindly toward all investments, and I desire to see every honest dollar get a legitimate return upon itself. However, there has grown up in the country a habit of too much competition; enterprises are duplicated uselessly, and we have this condition here.

When this second street-railway company applied to Congress for a charter and received it, it ought to have lived up to it. With a city here of some 450,000 population it is very probable that a second street railway was unnecessary. It involved double expense, double overhead charges, and all that kind of thing. I do not believe that Congress ought to do anything to deprive investors of a fair return upon honest investments, properly made.

It occurs to me that the right thing to do here would be to consolidate these companies, and, if they do not do it voluntarily, to force them to consolidate.

I am not an expert in regard to the cost of operating railways, but I question the statement that there has been so great an increase. It is true that the increase was considerable, but the construction in later days has been more permanent. Formerly, the ties were exposed to the weather. They rotted, and great expense was involved in replacing them. In these modern times, however, steel ties are used, and they are removed in a great measure from the ravages of the weather, and after the track is once constructed not so much repair is necessary.

If this second company can not carry its country lines without charging an unreasonable fare to the people who live in the District, perhaps a zone fare system could be established. Anyway, those who live nearer the center of the city should not be penalized for the unnecessary expenditure resulting from the building of branch lines which are not self-sustaining.

Mr. President, a still larger question presents itself to Congress. We are to blame for not having better facilities in the District. The Senator from Nebraska [Mr. NORRIS] a few years ago took great pains to have a bill passed by the Senate to develop the water power up the Potomac River here; and no better work could have been done for the District of Columbia and this section of the United States than to have developed that water power. Here we have this water running right by the District every day, thousands and thousands of dollars going to waste, and we have not the forethought or the judgment to develop that power. If we should consolidate these

railways and develop that water power, the cost of transportation could be reduced to a minimum; we would save great quantities of coal for future generations; we would have a better system; we could have better and cheaper lights in the District; we could even heat many of the houses by electricity.

Not only that, Mr. President, but if that power were developed it would be an example to the rest of the United States. It would be a wonderful incentive to anyone who looked at it to go back home and have power developed in his own section. If I may be excused for a personal allusion, the first large dam I ever saw was something like 40 feet high, and it made a wonderful impression upon me. I thought if those people could utilize their stream, we ought to utilize ours near home. Hence, that was the beginning of many developments in my section of the country.

I do not believe in being penurious with investments, but we are all persuaded to believe that the fare charged here now is excessive. I am a stickler for contracts, and I believe this company should be required to live up to its contract with the people of the District of Columbia. I have a deep sympathy for the people here. They feel hurt because we do not allow them representation in Congress. While I would not vote to allow them representation, that is a greater reason why we should look after their interests more carefully. So, Mr. President, I hope this amendment will be agreed to.

As I say, I am not much in sympathy with this kind of legislation, but I believe that the groundwork has been laid here to show that it is just. If these people had not wanted to accept the charter, they need not have done it. They did it with their eyes open. The population has increased since that time. The people who organized the company have not come here and shown any reason why the contract should be modified. On the other hand, they are pleased with it. The public is not posted about the bookkeeping of these different companies. Figures can be manipulated so as to arrive at almost any conclusion that is desired; and while this company may not be making a great profit upon one of its branches, yet on another it may be piling up enormous profits.

I for one am not envious of people who make money. I am not envious of people who go out and develop the country. I believe they should have a return upon their investment and should have a good return, because they assume many obligations and take many chances; but in this matter I believe that for the present we ought to adopt this amendment and give this experiment a trial, and see if these people will not consolidate, and if they can not get along and make a reasonable profit by charging the fare fixed in the contract.

Mr. STANLEY. Mr. President, will the Senator yield?

Mr. DIAL. I yield to the Senator from Kentucky.

Mr. STANLEY. I should like to inquire of the Senator whether any investigation of this matter has been made by the committee of the Senate naturally intrusted with the duty of investigating it and the power to make some determination on the merits of the question?

Mr. DIAL. Not to my knowledge. I am not on the District of Columbia Committee. I saw something in the paper a year or two ago about some figures or some preliminary investigation about consolidation, or some talk of consolidation.

Mr. PITTMAN. Mr. President, may I answer that question?

Mr. DIAL. Yes; I wish the Senator would. I am not posted on it.

Mr. PITTMAN. Mr. President, the Senator from Kentucky has just asked a question. He was not here when the matter came up a few minutes ago. The chairman of the committee said they had had under consideration all of these questions, and that they found as a committee that the expenses of these railroad companies could be materially reduced if they were consolidated, and their power plants consolidated, and the paralleling lines cut out, but that there was no authority in the law to do that. He added, however, that they had actually passed a bill through the Senate providing for that, and that the bill has been favorably reported from the House committee, and that in his opinion it will pass the House.

If that is accomplished—and I agree with the legislation—it will, as the committee said it would do, greatly reduce the cost of operating these railroads. That will be a benefit to the stockholders. It will be no benefit to the passengers unless there is a reduction in the rate. There should be a reduction in the rate at least back to the normal fare of 5 cents. There is no assurance that it will go back to the normal fare of 5 cents unless the commission puts it there. We are not fixing rates in this amendment, but we have a right as a Congress to impose a maximum restriction. That maximum restriction is 5 cents.

There will be no harm in adopting this amendment. Why? Because if that bill does not pass the House, then the House will kill this bill, and if that bill does pass the House, giving this great benefit to the stockholders of that railroad, it is their duty at the same time to pass this bill, so as to see that the people who pay the fares get some benefit from it.

There can be no harm, therefore, in passing this bill. I would not vote for this amendment except for the power of consolidation of those railroads, but if those railroads are going to be consolidated they should be restricted to a 5-cent fare. We have some obligation to the people who ride on these cars, as well as to the stockholders, and while we are legislating for the profits of these railroads by cutting down their expenses it is our duty, in my opinion, to make some restriction as to the fare.

Suppose we adopt this amendment. The bill providing for the consolidation has already passed the House. If the House does not pass it, then let it kill this amendment. If the House does pass it, then it is its duty to adopt this amendment.

Mr. STANLEY. Mr. President, I am a member of the Committee on the District of Columbia, and attend the meetings whenever my duties in Congress will permit. Very often, as my colleagues know, committee meetings are held at the same time, and it is impossible to attend more than one. There have been more or less exhaustive hearings, as I recall, on the question of the economies incident to a compulsory consolidation of the two lines. I do not desire to take too much of the time of the Senator—

Mr. DIAL. I am glad to yield to the Senator from Kentucky. In fact, I yield the floor.

Mr. STANLEY. I do not want the floor. I will be through in just a moment. It appears that one of these lines is either more favorably situated or more efficiently operated than the other. I express no opinion on that subject, but one of these lines is making a much better return than the other, and for that reason Congress is about to pass an act which will compel the efficient line to take over the inefficient line, and the inefficient line is bigger than the efficient line.

The mileage of the inefficient line is twice as great as the mileage of the efficient line. The owners of the efficient line claim that they are not so well located as the line that is making the least money, but that their profits are due entirely to the efficiency of their operation. They do not care to be consolidated with the other company. They were organized under a law, in my opinion a very wise law, which prohibited the consolidation and gave us something of competition. Of course, that idea of competitive business and of restraining trusts and combinations, except by means of a governmental commission which shall run their own business and feed them with a spoon, has passed into a dream of things that were; but be that as it may—

Mr. PITTMAN. Will the Senator pardon me one moment? Did the Senator ever hear of competition existing between two lines, except competition to get passengers? Was there ever any competition in fares?

Mr. STANLEY. There is competition in service, necessarily.

Mr. PITTMAN. But there never is competition in the matter of fares.

Mr. STANLEY. As a rule, the fares that prevail on one line under similar conditions will prevail on another, just as there must be the same fare at the common termini of the same railroads, although there may be competition at intermediate points and in a dozen different ways. But be that as it may, the law as now written forbids consolidation, under the opinion of Congress that that was the best way to get good service.

Mr. DIAL. Does not the Senator think it would be advisable to change the law?

Mr. STANLEY. It may be; I am not saying it is not. As to whether you get better service by combining the telephone companies and street car companies under one control arbitrarily or not, I am not expert enough to express a well and matured opinion, and for that reason I do not care to express any. But right or wrong, one of these companies was organized under a law which forbade its consolidation with any other company. These lines parallel each other and run within a few blocks of each other all over the city, and the company most efficiently operated claim that they get the bulk of the traffic at the same fare because of the promptness and efficiency of the service. If that be true, you are compelling an efficient line to take over an inefficient line after it was incorporated and created under a law which assured them that they would not be compelled to consolidate, that it would be illegal to do it. In addition to that, my impression is that there has been no definite determination by any committee of the Senate as to

the cost of this service to either one of these roads, or on the question as to whether or not a 5-cent fare will throw them both into the hands of a receiver. Pending that, it strikes me that if we should agree to an amendment of this kind we would be getting the cart before the horse.

If Congress has power to fix a 5-cent fare before the consolidation, it has ample power to fix it after the consolidation. If these companies can be operated at a profit charging a 5-cent fare, they ought to charge that, and if they can not, we ought not to force them into bankruptcy. We are passing without evidence upon a question that is technical, which requires the opinion of engineers and the careful, sober, well-considered judgment of business men. It is not a question for stump speeches or for appeals to the sympathy of the great public. I am in favor of protecting the public as much as anybody, but the public never demanded an injustice and never should do so.

Mr. PITTMAN. Mr. President—

Mr. DIAL. I yield.

Mr. PITTMAN. I have the highest opinion of the opinion of my friend from Kentucky, but I do not see how on earth he can conceive that the restriction to a 5-cent fare can put either one of these roads, or a consolidation of the two, into bankruptcy when he knows the history of the two roads. They have operated for years on a 5-cent fare without going into bankruptcy. A 5-cent fare is not an unusually small fare; it is an unusually large fare in these days and times. But you are not only going back to normal, but there is an act which has passed the Senate and is going to pass the House which will reduce the costs of both of those roads, undoubtedly.

The Senator says that one of the roads is inefficiently managed. One of the roads has not been making as much of a profit as the other road, but that so-called inefficient road has been making enormous profits out of its electric light plant, which the same stockholders own. The law, however, provided that they could not combine the two, but the same stockholders own both of them. If your act provided that they could combine their light company and their inefficient street car company when they combined those companies the consolidated company would be just as efficient as the other company.

Mr. STANLEY. Mr. President, I do not profess to know all that is in the hearings. As my valued friend the Senator well knows, these hearings occurred at a time when we were considering vital matters of the same character in the Committee on Interstate and Foreign Commerce, matters affecting the whole country, and when I had to choose between a matter affecting the citizens of the District of Columbia and one affecting the shippers of the United States I attended the same committee that I presume the Senator who is addressing me attended.

Is there any finding as to this matter on the part of those qualified to know? I endeavored to ascertain that fact on one or two occasions, when those witnesses present could not tell—

Mr. DIAL. Let us have order, Mr. President.

The VICE PRESIDENT. The Senate will be in order.

Mr. STANLEY. Is there any finding on the part of any disinterested engineer or expert in the management of these facilities that upon the combination or consolidation of the power plant and of the two systems they can be operated at a profit charging 5 cents, without any regional arrangement or any division of fares for long hauls, or anything of that kind? I know that if there is one man in the Senate who is removed as far as the heavens from the earth from any attempt to support a merely popular thing, without regard to its justice—

Mr. McNARY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state his inquiry.

Mr. McNARY. The Senator from South Carolina obtained the floor about 15 minutes ago, and in that time has farmed it out to other Senators. I make the point of order that for that reason the Senator from South Carolina has lost the floor.

Mr. McKELLAR. Can we not have a vote?

Mr. STANLEY. Mr. President, I hope that if he has lost the floor, I have found it.

Mr. FRELINGHUYSEN. The Senator has not been recognized.

Mr. DIAL. I am glad to give up the floor. I have been trying to give it up for 10 minutes.

The VICE PRESIDENT. The Chair holds that the point of order is well taken.

Mr. McNARY. I think I have obtained the floor by that fact. Am I recognized?

The VICE PRESIDENT. The Chair will recognize the Senator from Oregon.

Mr. McNARY. It is evident to most of us that we can not regulate the street railway fares on the floor of the Senate.

There are many important bills on the calendar, and we have lost almost two hours this morning. I have a bill in mind now—the filled milk bill—which should receive the attention of this body, and in order to clear the way I move to lay the amendment offered by the Senator from Tennessee on the table.

Mr. McKELLAR. A parliamentary inquiry.

The VICE PRESIDENT. The Senator will state his inquiry.

Mr. McKELLAR. A vote having been asked and the yeas and nays having been ordered—

Mr. LODGE. That makes no difference.

Mr. McKELLAR. I am asking the Chair what the parliamentary situation is. Under those circumstances, can a motion to lay on the table be entertained?

The VICE PRESIDENT. The Chair understands it can be entertained, notwithstanding that the yeas and nays were ordered.

Mr. LODGE. The motion to lay on the table is not debatable.

Mr. PITTMAN. What is the ruling of the Chair?

The VICE PRESIDENT. The question is on agreeing to the motion to lay the amendment on the table.

Mr. PITTMAN. Was not a point of order made against that?

Mr. LODGE. The Chair overruled the point of order.

Mr. STANLEY. Mr. President—

The VICE PRESIDENT. The question is on agreeing to the motion to lay on the table.

Mr. PITTMAN. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state his inquiry.

Mr. PITTMAN. Has the Chair sustained the point of order made against the Senator from Kentucky speaking?

The VICE PRESIDENT. The Senator from South Carolina stated that he relinquished the floor. The Chair then recognized the Senator from Oregon.

Mr. PITTMAN. Of course, it may be too late to appeal from the ruling of the Chair, but I think the RECORD will show that when the Senator from Kentucky was speaking the Senator from South Carolina said, "I yield the floor," and the Senator from Kentucky continued to speak.

The VICE PRESIDENT. Of course, if the Senator from South Carolina said he yielded the floor, it was then the province of the Chair to recognize some one, and the Chair recognized the Senator from Oregon.

Mr. PITTMAN. While the Senator from Kentucky was speaking?

The VICE PRESIDENT. He was not speaking at that time.

Mr. STANLEY. Mr. President, a parliamentary inquiry.

The VICE PRESIDENT. The Senator will state his inquiry.

Mr. STANLEY. I have had only about twenty years' experience in this body and the other, and this is the first time in an orderly debate I have ever seen a Senator or a Member taken off his feet in the midst of a discussion by one who asked to be recognized while he was talking, unless he was out of order, and was so advised. If that is the rule, I want to know it.

Mr. FRELINGHUYSEN. I call for the regular order.

The VICE PRESIDENT. The question is on agreeing to the motion to lay on the table the amendment proposed by the Senator from Tennessee.

Mr. McKELLAR. I ask for the yeas and nays.

The yeas and nays were ordered, and the reading clerk proceeded to call the roll.

Mr. FERNALD (when his name was called). I have a general pair with the senior Senator from New Mexico [Mr. JONES]. In his absence, I withhold my vote.

Mr. OWEN (when his name was called). Transferring my pair with the Senator from New Jersey [Mr. EDGE] to the senior Senator from Missouri [Mr. REED]. I vote "nay."

The roll call was concluded.

Mr. MOSES (after having voted in the affirmative). I transfer my pair with the junior Senator from Louisiana [Mr. BROUSSARD] to the senior Senator from New York [Mr. WADSWORTH] and will allow my vote to stand.

The result was announced—yeas 37, nays 36, as follows:

YEAS—37.

Ball	Hale	McNary	Spencer
Bayard	Harrell	Moses	Sterling
Calder	Jones, Wash.	New	Townsend
Cameron	Kellogg	Norbeck	Warren
Colt	Ladd	Oddie	Watson
Cummins	Lenroot	Phipps	Weller
Curtis	Lodge	Polindexter	Willis
Ernst	McCumber	Pomerene	
France	McKinley	Reed, Pa.	
Frelinghuysen	McLean	Smoot	

NAYS—36.

Ashurst	George	La Follette	Shields
Borah	Gerry	McKellar	Smith
Brookhart	Glass	Norris	Stanley
Capper	Harris	Overman	Sutherland
Caraway	Harrison	Owen	Swanson
Couzens	Heflin	Pittman	Trammell
Culberson	Hitchcock	Ransdell	Underwood
Dial	Johnson	Robinson	Walsh, Mont.
Fletcher	King	Sheppard	Williams

NOT VOTING—23.

Brandeggee	Fernald	Myers	Shortridge
Broussard	Gooding	Nelson	Simmons
Bursum	Jones, N. Mex.	Nicholson	Stanfield
Dillingham	Kendrick	Page	Wadsworth
Edge	Keyes	Pepper	Walsh, Mass.
Elkins	McCormick	Reed, Mo.	

So Mr. McKELLAR's amendment was laid on the table.

The PRESIDING OFFICER (Mr. McCUMBER in the chair). The hour of 1 o'clock having arrived, the bill which has been under consideration will go to the calendar, and the Chair lays before the Senate the unfinished business, which will be stated.

The ASSISTANT SECRETARY. A bill (H. R. 12817) to amend and supplement the merchant marine act, 1920, and for other purposes.

Mr. ASHURST. Mr. President—

Mr. JONES of Washington. Mr. President, will the Senator from Arizona yield to me a moment to submit a request?

Mr. ASHURST. I yield with the understanding that it will not lead to long debate.

Mr. JONES of Washington. I ask unanimous consent that when the Senate closes its business to-day it recess until 11 o'clock Monday morning.

Mr. ROBINSON. Mr. President, will the Senator indicate about what time he expects to close the session this afternoon?

Mr. JONES of Washington. I would like to run until at least 5 o'clock to-day.

Mr. SWANSON. I object to the request for a recess. Monday is calendar day, and there are a great many bills on the calendar which ought to be considered.

The PRESIDING OFFICER. Objection is made.

Mr. JONES of Washington. I did not desire to ask Senators to remain here this afternoon. I had hoped to avoid that, because I want to recess when we do quit the work to-day. I shall now have to ask Senators to remain, and we will take a recess by motion.

Mr. SWANSON. We ought to have a morning hour on Monday.

Mr. ASHURST. Mr. President, I must decline to yield further. I claim the floor in my own right.

Mr. JONES of Washington. Of course; we had a morning hour this morning, and it was wasted.

The PRESIDING OFFICER. The Senator from Arizona declines to yield further, and will proceed.

Mr. ASHURST. Mr. President, the words I used a few moments ago are deemed offensive by my friend the Senator from Tennessee [Mr. McKELLAR]. I am not the kind of man to use words of an offensive nature in public and then whisper an apology in the ear of the person offended. If I use words in public that seem offensive, my apology is made in public. I now ask leave to withdraw the language deemed to be offensive. We were given a morning hour and it is irritating to have the entire hour consumed by one bill. That was the reason why I spoke with vehemence, but I assure my good friend from Tennessee I meant no reflection, and I hope he will accept what I now say.

Mr. ROBINSON. Mr. President, will the Senator suspend just a moment and yield to me?

Mr. ASHURST. Cheerfully, provided I do not lose the floor.

CONSIDERATION OF CALENDAR ON MONDAY.

Mr. ROBINSON. I think the calendar ought to be considered. I was just about to propose that when the Senate conclude its business to-day, it adjourn with the understanding or agreement that during the morning hour Monday unobjectioned bills on the calendar shall be considered. There is good reason for that. It is about the last opportunity the Senate will have to pass over to the body at the other end of the Capitol its bills which have not yet been disposed of by this body and to consider House bills for action during the present session of Congress. An agreement to consider only unobjectioned bills under Rule VIII would enable Senators to avoid the consumption of the entire morning hour in the consideration of one or two bills. It would afford the Senate an opportunity to transact such business on the calendar as it desired to transact. I myself would not urge an adjournment to-day but for that consideration.

Mr. JONES of Washington. I will say to the Senator that if we may adjourn until 10 o'clock Monday morning I would be willing to do that.

Mr. ROBINSON. I hear about me declarations that there are a number of committee meetings called for Monday morning. I myself have one.

Mr. JONES of Washington. The Senator knows the situation.

Mr. ROBINSON. Yes; I understand.

Mr. JONES of Washington. I am willing to adjourn until 10 o'clock Monday morning.

Mr. ROBINSON. I think the Senator ought to be content with adjournment until 11 o'clock Monday in view of the fact that committee meetings have already been called.

Mr. JONES of Washington. We have now, I think, far more important business before us than committee meetings at this time.

Mr. ROBINSON. I ask unanimous consent, with the indulgence of the Senator from Arizona—

Mr. ASHURST. I yield with the understanding that I do not lose the floor.

Mr. ROBINSON. I ask unanimous consent that when the Senate concludes its business to-day it adjourn until 11 o'clock Monday morning, and that during the morning hour only unobjected bills on the calendar shall be considered under Rule VIII.

Mr. JONES of Washington. If that is amended to make it 10 o'clock I shall not object.

Mr. ROBINSON. As it is now the practice of the Senate to meet at 11 o'clock, I feel certain that if we should meet at 10 o'clock perhaps half of the hour between 10 o'clock and 11 o'clock would be consumed in getting the attendance of a quorum. I do not think anything would be accomplished by meeting at 10 o'clock. The time would be consumed in procuring the attendance of a quorum rather than in the disposition of business on the calendar. I think every Senator realizes that that is true. In view of that situation, I am unwilling to modify my request for unanimous consent.

Mr. JONES of Washington. Several Senators on this side of the aisle have urged that we adjourn until 11 o'clock. Of course I know that it makes a difference of only an hour, and I am willing to do that.

Mr. LODGE. The understanding is that only unobjected bills are to be considered?

Mr. ROBINSON. Yes; that is the proposed agreement.

Mr. LODGE. That is what I understood the agreement to be, because in any other way it would be a waste of time.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request presented by the Senator from Arkansas? The Chair hears none, and it is so ordered.

The agreement was reduced to writing, as follows:

UNANIMOUS-CONSENT AGREEMENT.

It is agreed by unanimous consent that when the Senate concludes its business for this day it will adjourn to meet at 11 o'clock a. m., Monday, February 19, 1923, and that during the morning hour on Monday the Senate will consider unobjected bills upon the calendar under Rule VIII.

Mr. JONES of Washington. Mr. President, will the Senator from Arizona yield to me to give a notice?

Mr. ASHURST. Certainly.

Mr. JONES of Washington. I desire to give notice to the Senate that I expect to hold the Senate in night session Monday night and every night thereafter until the bill is disposed of or we reach some agreement. I hope we may be able to avoid night sessions, but that notice I give and I expect to stand up to it as long as the majority of the Senate will stand behind me.

Mr. SWANSON. May I ask the Senator from Washington how late he expects to remain in session each night?

Mr. JONES of Washington. Oh, we may remain in session all night. How late we sit will depend upon the progress we make with the bill.

ROAD IN FORT APACHE INDIAN RESERVATION, ARIZ.

Mr. ASHURST. Now, Mr. President, I ask unanimous consent for the present consideration of a bill, and I will make as brief a statement of the object of the bill as may be.

Mr. JONES of Washington. I can not yield for that purpose. If the Senator—

Mr. ASHURST. I have the floor, and I hope the Senator from Washington will allow me to state my request.

Mr. LODGE. But the Senator from Arizona is making a request for unanimous consent, and objection may be interposed.

Mr. ASHURST. But I have not yet stated my request for unanimous consent.

Mr. JONES of Washington. If it appears from its reading that the bill for which the Senator desires consideration may be

passed without any discussion, I shall not object. I merely wish to make that suggestion.

Mr. ASHURST. I should be grievously disappointed if the Senator from Washington after my short statement should object to the present consideration of the bill.

Mr. JONES of Washington. But I do not want even a short statement. If I yield to the Senator from Arizona, I shall then have to yield to other Senators.

Mr. ASHURST. But Senators should not be called on to vote on the bill until they know what it is.

Mr. JONES of Washington. I hope the Senator from Arizona in the interest of his bill will merely have it read.

Mr. ASHURST. Indeed, I can make my statement briefer than the reading of the bill.

During the time the bill making appropriations for the Interior Department was under consideration I offered an amendment to that bill proposing to appropriate \$15,000 from the funds of certain Indians in Arizona for the construction of a road which is wholly and solely within an Indian reservation in northeastern Arizona. There are over 2,000 of those Indians. Their property is worth about \$3,000,000 and their income is about \$75,000 from the sale of matured timber. A county, the poorest in our State, has bonded itself for over \$200,000 to build the road and has set apart \$15,000 to build the road in the Indian reservation.

The Senator from Utah [Mr. SMOOT] objected to the amendment which I offered to the appropriation bill, but stated that if I would prepare a separate bill he should have no objection to that. Such a bill has passed the House of Representatives, has been reported favorably from the Committee on Indian Affairs of the Senate, and is now on the calendar.

It proposes to appropriate \$15,000 of the funds of the Fort Apache Indians to construct the road, which, as I have stated, is wholly on their reservation. I ask that the report on the bill may be included in the RECORD.

There being no objection, the report (No. 1144) submitted by Mr. ASHURST on February 14, 1923, was ordered to be printed in the RECORD, as follows:

[Report to accompany H. R. 13128.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 13128) authorizing an appropriation for the construction of a road within the Fort Apache Indian Reservation, Ariz., having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts relating to the bill are fully set forth in House Report No. 1380, Sixty-seventh Congress, fourth session, which is appended hereto and made a part of this report.

[House Report No. 1380, Sixty-seventh Congress, second session.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 13128) authorizing an appropriation for the construction of a road within the Fort Apache Indian Reservation, Ariz., having considered the same, report the bill back to the House with a recommendation that it do pass.

The bill was referred to the Department of the Interior for report, and in the following letter the Secretary recommends its enactment:

DEPARTMENT OF THE INTERIOR,
Washington, January 9, 1923.

HON. HOMER P. SNYDER,

Chairman Committee on Indian Affairs, House of Representatives.

MY DEAR MR. SNYDER: This will refer further to your letter of December 5, 1922, transmitting for report and recommendation a copy of H. R. 13128, proposing to authorize an appropriation of \$15,000 from the tribal funds of the Fort Apache Indians to pay one half the cost of constructing a road between Cooley and the northeastern boundary of the reservation, contingent upon payment by the county of the other half. I recommend that the proposed bill receive the favorable consideration of your committee and of Congress.

This reservation comprises over 1,000,000 acres of land inhabited by 2,552 Indians. It is estimated that the timber on the reservation is worth approximately \$3,000,000. A contract has been made to cut the timber on the reservation, which will very likely bring in over \$100,000 annually for a number of years. The amount now to the credit of the tribe from this source is about \$79,000 in excess of the sum required for support and civilization during the current fiscal year.

I fully realize the necessity of better roads on this reservation as one of the most important factors in the progress of the Indians and am, of course, willing to cooperate with the local people along this line to the greatest practicable extent so far as available funds will permit consistent with the welfare and interest of the Indians.

The road in question is to take the place of an old, unimproved road connecting Cooley with Springville and other parts of Apache County off the reservation, and will be about 20 miles in length. While this particular road is not the one most needed by the Indians now, from the standpoint of the actual use they will make of it, in view of the fact that, as I understand, Apache County has already voted \$15,000 to pay its half of the cost I am inclined to favor the proposed appropriation from tribal funds as being justified by the indirect benefit the road will be to the Indians by opening up that part of the reservation, and to show our willingness to meet the local people halfway in such matters.

Sincerely,

ALBERT B. FALL, Secretary.

The following letter from the chairman of the board of supervisors of Apache County, Ariz., shows that \$15,000 has been set aside by that county to match this appropriation if authorized to be made from the tribal funds of the Indians of the Fort Apache Reservation:

ST. JOHNS, ARIZ., November 16, 1922.

HON. CARL HAYDEN,

House of Representatives, Washington, D. C.

DEAR SIR: Apache County, not having any highway to connect the town of Cooley, on the Apache Indian Reservation, with any part of the

county, has by bond issue raised \$15,000 to apply on building a road from Cooley across the Apache Indian Reservation to connect with a highway to Eagar and Springerville.

The county is not financially situated to complete this highway, as it has reached the limit on issuing bonds.

As this road is of vital importance to this county and the Indians on the reservation as well, opening up their country a distance of 20 miles—and, besides, this road will connect with the road from Cooley to the White River Indian Agency, enabling that agency to procure what produce it needs which is raised here—we therefore respectfully request you to use your best efforts in securing for this road a sum amounting to at least as much as we are expending, to wit, \$15,000, in order to build a graded road.

I remain, respectfully yours,

JOS. UDALL,

Chairman Board of Supervisors of Apache County.

Mr. LENROOT. Mr. President, will the Senator from Arizona yield to me?

Mr. ASHURST. I yield.

Mr. LENROOT. Is the sum proposed to be appropriated reimbursable?

Mr. ASHURST. It is to come out of the funds of the Indians.

Mr. LENROOT. It is to come out of their own funds?

Mr. ASHURST. Yes. The bill reads as follows:

Be it enacted, etc., That there is hereby authorized an appropriation of \$15,000 from any tribal funds on deposit in the Treasury to the credit of the Indians of the Fort Apache Indian Reservation, Ariz., to be immediately available, to pay one-half the cost of constructing a wagon road, within said reservation, between Cooley and the north-east boundary of said reservation: *Provided,* That no part of the appropriation herein authorized shall be expended until the Secretary of the Interior shall have obtained from the proper authorities of the county of Apache, Ariz., satisfactory guarantees of the payment by said county of one-half of the cost of the construction of said road.

Mr. LENROOT. That is satisfactory to me.

Mr. JONES of Washington. I think the Senator from Arizona may have his bill passed if he does not proceed further.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

Mr. JONES of Washington. With the understanding that the bill will not lead to further debate, I shall not object to its consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 13128) authorizing an appropriation for the construction of a road within the Fort Apache Indian Reservation, Ariz.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

DAVID C. VAN VOORHIS.

Mr. POMERENE. I ask unanimous consent for the present consideration of the bill (S. 4071) for the relief of David C. Van Voorhis. I do not think there will be any discussion of the bill at all.

Mr. JONES of Washington. If there is no discussion of the bill, I shall make no objection to its consideration.

Mr. POMERENE. If the Senate cares to hear a brief statement from me—

Mr. JONES of Washington. I suggest that the bill may be read.

Mr. POMERENE. Very well.

The bill was read, as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to David C. Van Voorhis, of Bowling Green, Ohio, out of any money in the Treasury not otherwise appropriated, the sum of \$1,931.17, being the amount of war savings stamps lost by him while postmaster during the year 1918, without fault on his part, and which amount was thereafter by him paid to the Government out of his own funds.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Mr. POMERENE. Mr. President, the report on the bill which has just passed was submitted by the senior Senator from Arkansas [Mr. ROBINSON]. In order that Senators and others who may be interested in the bill may know what the facts are in regard to the measure, I ask that the report on the bill be incorporated in the Record, without reading.

There being no objection, the report (No. 1126) submitted by Mr. ROBINSON on February 9, 1923, was ordered to be printed in the Record, as follows:

Report to accompany S. 4071.

The Committee on Claims, to whom was referred the bill (S. 4071) for the relief of David C. Van Voorhis, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The purpose of the bill is to reimburse David C. Van Voorhis, of Bowling Green, Ohio, the sum of \$1,931.17, being the amount of war-savings stamps lost by him while postmaster during the year 1918, without fault on his part, and which amount was thereafter by him paid to the Government out of his own funds.

The facts are fully set forth in the following letter from the Post Office Department, which is appended hereto and made a part of this report:

POST OFFICE DEPARTMENT,
THIRD ASSISTANT POSTMASTER GENERAL,
Washington, December 13, 1920.

HON. ATLEE POMERENE,

United States Senate, Washington, D. C.

MY DEAR SENATOR POMERENE: Referring to your personal call at the department in behalf of D. C. Van Voorhis, postmaster, Bowling Green, Ohio, the records show that the shortage in the 1918 war-stamp account at Bowling Green has been thoroughly investigated by the department under Case No. 54663-C.

The following is quoted from the report of the post-office inspector assigned to this investigation, which covers the salient points in connection with the shortage:

"In the personal investigation at Bowling Green the accounts and records of the office covering the 1918 transactions in war-savings and thrift stamps have been carefully examined and no information has been obtained therefrom which would account for any part of the alleged loss or shortage. The accounts have been properly kept and no attempt to alter or falsify them in any way has been made. It appears that this discrepancy in the account became apparent in September or October, 1918, and both the postmaster and assistant were aware of it, but were entirely unable to account for it or to find any errors in the account.

"Investigation at the office in question has also been made with a view to ascertaining whether or not the shortage was due to the dishonesty of any employee connected with the service or who had access to the war savings stamp supplies, but nothing has been disclosed by investigation to indicate that such is the case.

"The clerical force at this office is not large, and during 1918, when this shortage occurred, it consisted of John W. Brewer, assistant postmaster; Claren Crane, George A. Phillips, and Jessie Mitchell, clerks; with substitute clerk Harold Bates, who was appointed regular on August 16, 1918. The record and reputation of each of these employees have been examined, but there is apparently no reason to question the honesty of any one of them. The assistant postmaster and clerk Jessie Mitchell did most of the work in the money-order and registry room, where practically all of the financial work is handled and where the war savings and thrift stamp stocks were kept, but the other clerks, although assigned to the mailing section, had access to the financial section. So also did the janitors, but these are both men of good reputation and several years' service and have never been suspected of dishonesty.

"The post office at Bowling Green is of the second class, and from the installation of the central accounting system until March, 1920, it was the central accounting office for Wood County and the source of stamp supplies for 36 offices, of which 10 are presidential. The handling of the accounts, requisitions, etc., for the 36 offices entailed an enormous amount of work, practically all of which fell upon the assistant postmaster.

"The handling of the war savings and thrift stamp transactions was, of course, in addition to the regular work, and during several months of the year 1918 was of such proportions that it could not be properly taken care of by the force at this office. During the months of August and September, 1918, a war savings stamp drive was put on by the State war savings committee, and the sales at the Bowling Green post office, including district requisitions, amounted to \$242,199.65 for August and \$102,786.15 for September, as against an average monthly sale of \$35,567.49 for the other months of the year. While this amount of business might easily have been handled by the office had the individual sales been in large amounts and fewer in number, they were, in fact, small in amount and great in number and accordingly required a great deal of time and labor. The requisitions from district post offices, whose fixed credits were not large owing to their inability to give proper protection, were small and frequent and entailed a great deal of work. It is stated that, during the rush period, which extended over two months, the office was unable to make up daily cash balances and to check the transactions and stock in order to ascertain accurately how the account stood.

"The work during this period was so heavy and his duties so onerous that Assistant Postmaster John W. Brewer suffered a nervous breakdown and was absent from duty several weeks. He returned to work before he was really able to do so and the postmaster claims that he was entirely unable to perform his duties and for a time was obliged to leave the office daily after two or three hours' work. The postmaster endeavored to induce him to resign owing to his physical and mental condition, but he insisted that he was recovering and continued to fill the position until March 1, 1919, when he resigned.

"The postmaster does not suspect the dishonesty of any employee of the office and does not believe that the shortage is due to the theft of stamps or funds by anyone connected with the service. He is of the opinion that the discrepancy is the result of errors made over the counter in sales to the public or in the handling of requisitions for district offices, and that it is likely due to the nervous condition and disability of former Assistant Postmaster Brewer.

"The postmaster states that he reported to the department the condition of the assistant and requested that he be given authority to replace him, but that no action was taken in the matter. It appears, however, that some investigation of the matter was made by an inspector in October or November, 1918, and it is probable that the condition of the assistant postmaster at that time was not as serious as the postmaster thought it to be, and that it did not justify his displacement.

"It is more probable that this discrepancy in the war savings stamp account has occurred through errors or accidental loss of stamps during the period when the savings drive was at its peak and when the office, as a result thereof, was in a chaotic condition because of the unusual amount of work, which the force was unable to handle.

"An inspection of this office made on July 9, 1918, prior to the discrepancy in the account, disclosed that the office was in an unsatisfactory condition, due partly to the amount of work to be done and partly to lack of organization.

"There never has been any question of Mr. Brewer's integrity. His reputation and standing in the community in recent years appears to have been very good.

"Whether or not the loss was due to errors or incapacity on the part of the assistant postmaster can not at this time be determined, and Mr. Brewer, prior to his being adjudged insane, was entirely

unable to account for it, and he and the postmaster had known, searched for, and discussed the loss for some time before the close of 1918 accounts.

"Prior to his breakdown, Mr. Brewer had always been considered reasonably accurate in his work, although slow and without much ability to systematize. The postmaster * * * is without any particular training in the keeping of records and in financial transactions * * *. It is quite as probable, therefore, that the errors which caused this loss may have been made in part by the postmaster as well as the assistant or others. In any event, there is no evidence that the responsibility rests with the assistant to an extent which would justify a demand upon him or his sureties for the payment of the whole or any part of the shortage.

"In connection with this investigation the accounts and records of a number of the district offices of the county have been examined in connection with regular inspection of those offices in the hope that some questionable transaction between them and the central accounting office might be found which would furnish some clue to the alleged loss, but none has been found.

"If there was any way in which the postmaster could be given credit or be reimbursed for this loss it would seem to be an equitable thing to do, because, whatever the actual cause of this loss may have been, its greatest contributing factor was the unusual burden and responsibility placed upon him and his office force by the work of the central accounting system and the war savings and thrift stamp drives."

It appears from the letter of Mr. Van Voorhis to you, dated November 29, that he is of the opinion that in view of the fact that the former assistant postmaster, John W. Brewer, "had full charge of all accounts, including the war-savings stamp account in question," that he, as postmaster, should be relieved of responsibility for the financial affairs of his office. Obviously this view can not be accepted by the department unless the postmaster can actually fix responsibility for the shortage on the assistant postmaster to whom he had assigned the war savings account, and the postmaster admits that he is unable to fix the responsibility for this shortage on the former assistant postmaster, and the investigation made by the inspector assigned to the case confirms that fact.

The report shows that in so far as could be determined by the investigation made nothing has developed which indicates criminal negligence on the part of the postmaster or any of the employees connected with the Bowling Green office and the personal integrity and honesty of the postmaster and employees of the office are not involved. The only reflection is the lack of ability on the part of the postmaster to properly organize the work in his office in such a manner as to properly protect Government securities and to be able to fix responsibility for losses or shortages in case losses or shortages occurred.

The department is not unmindful of the great amount of extra work performed at the Bowling Green office in connection with the sale of war-savings and thrift stamps, and that the postmaster and other employees at the Bowling Green office cheerfully performed this extra work and assumed the heavy responsibility resulting from the sale of \$700,690.72 in war-savings and thrift stamps during the calendar year 1918 without extra compensation, exhibiting a high degree of patriotic service to the country during the war. In view of this fact, in addition to the fact that a searching investigation fails to disclose any criminal responsibility on the part of any of the officers or employees connected with the Bowling Green office, it would be a pleasure to relieve the postmaster from accountability for the shortage, but unfortunately there is no provision of law whereby such relief can be granted by the Post Office Department.

A copy of this letter is inclosed for transmission to Postmaster Van Voorhis, if you wish to use it for that purpose, and the papers which you left at the department are returned as requested.

Yours very truly,

W. J. BARROWS,
Acting Third Assistant Postmaster General.

WILLIAM H. LEE.

Mr. OVERMAN. Mr. President, will the Senator from Washington yield to me for just a moment, in order that I may call up a bill, which I do not think will take any time?

Mr. JONES of Washington. Might not the Senator's bill be considered during the morning hour on next Monday, when we take up the calendar?

Mr. OVERMAN. The Senator from Washington has yielded to other Senators and why might he not also yield to me for this purpose?

Mr. JONES of Washington. Very well. Perhaps we shall consume less time by taking that course.

Mr. OVERMAN. I merely desire to make a brief statement.

Mr. JONES of Washington. I hope the Senator will merely ask that his bill may be read.

Mr. OVERMAN. Very well, I ask that the bill may be read. The bill has the indorsement of the Secretary of the Navy and of everyone else who has had anything to do with it.

The PRESIDING OFFICER (Mr. POINDEXTER in the chair). Is there objection to the present consideration of the bill?

Mr. KING. Let the bill be read, Mr. President.

The PRESIDING OFFICER. The Secretary will read the bill.

The bill (S. 3879) for the relief of William H. Lee, was read as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to William H. Lee, Lieutenant commander, United States Navy, out of any funds in the Treasury not otherwise appropriated, the sum of \$828.29, said sum being the amount of restitution made by him out of his private funds for money stolen from his safe by a man serving under him, for which said officer was held responsible, while stationed as recruiting officer for the United States Navy in the city of San Francisco, Calif., on December 30, 1920.

Mr. JONES of Washington. If the bill leads to no discussion, I shall not object to its consideration.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill which the Secretary has read?

Mr. KING. Mr. President, is there a unanimous report made on this bill, I will ask the Senator from North Carolina?

Mr. OVERMAN. Yes; the committee is unanimous in favor of the bill.

Mr. KING. I have very grave doubt about the wisdom of passing the bill, but, in deference to my very genial friend, I believe I shall not object.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. Overhues, its enrolling clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the amendment of the Senate numbered 33 to the bill (H. R. 13481) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1924, and for other purposes.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 10003) to further amend and modify the war risk insurance act; requested a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. SWEET, Mr. GRAHAM of Illinois, and Mr. RAYBURN were appointed managers on the part of the House at the conference.

The message further announced that the House had agreed to the concurrent resolution (S. Con. Res. 40) providing for the reenrollment of the bill (S. 2023) defining the crop failure in the production of wheat, rye, or oats by those who borrowed money from the Government of the United States for the purchase of wheat, rye, or oats for seed, and for other purposes, with amendments.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolutions, and they were thereupon signed by the Vice President:

S. 3721. An act providing for the erection of additional suitable and necessary buildings for the National Leper Home;

H. R. 369. An act for the relief of the owner of Old Dominion Pier A;

H. R. 7588. An act for the relief of Henry Peters;

H. R. 10529. An act for the relief of Harry E. Fiske;

H. R. 13351. An act authorizing the Secretary of the Navy, in his discretion, to deliver to the Daughters of the American Revolution of the State of South Carolina the silver service which was used upon the battleship *South Carolina*;

H. R. 13926. An act making appropriations for the legislative branch of the Government for the fiscal year ending June 30, 1924, and for other purposes;

H. J. Res. 418. Joint resolution authorizing the use of public parks, reservations, and other public spaces in the District of Columbia; and the use of tents, cots, hospital appliances, flags, and other decorations, property of the United States, by the Almas Temple, Washington, D. C., 1923 Shrine Committee (Inc.), and for other purposes; and

H. J. Res. 440. Joint resolution to satisfy the award rendered against the United States by the arbitral tribunal established under the special agreement concluded June 30, 1921, between the United States of America and the Kingdom of Norway.

THE MERCHANT MARINE.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12817) to amend and supplement the merchant marine act, 1920, and for other purposes.

The PRESIDING OFFICER (Mr. FRELINGHUYSEN in the chair). The Secretary will state the next amendment of the Committee on Commerce.

The READING CLERK. On page 3, line 14, after the word "vessels," it is proposed to insert "operating on routes established by the board prior to the enactment of this act."

Mr. JONES of Washington. I move to amend the amendment by striking out the word "this" before the word "act" and inserting the word "such."

Mr. FLETCHER. Mr. President, let us see just exactly what is proposed to be done. The committee amendment is, in line 14, after the word "vessels," to insert the words "operating on routes established by the board prior to the enactment of this act." That is the amendment now under consideration. Now, what is it the Senator from Washington proposes?

Mr. JONES of Washington. Section 2 of the bill refers to section 7 of the act of 1920, under which the routes were established, but the word "such" should be employed in the proviso, because it refers to the pending bill.

The PRESIDING OFFICER. The Secretary will state the amendment to the amendment.

The READING CLERK. In the committee amendment, on page 3, in line 14, before the word "act," it is proposed to strike out the word "this" and insert the word "such," so as to read: operating on routes established by the board prior to the enactment of such act.

Mr. FLETCHER. I presume that relates to vessels operating at the present time, but I do not gather the entire purport of the amendment proposed by the Senator from Washington to the amendment.

Mr. JONES of Washington. The proviso refers to the act of 1923, while the whole section, as the Senator realizes, is an amendment to section 7 of the act of 1920 and becomes a part of the act of 1920. The word "such," proposed to be inserted, refers to the words "merchant marine act of 1922." Of course, the figures "1922" should be changed to "1923."

Mr. FLETCHER. Then, "1922" ought to be changed to "1923"?

Mr. JONES of Washington. Yes; I will offer that amendment.

Mr. FLETCHER. That is what I thought the Senator meant to cover. He intends to move to strike out "1922" and substitute "1923."

Mr. JONES of Washington. Yes; that will be done.

Mr. FLETCHER. And now the Senator proposes to strike out the word "this" and insert the word "such."

Mr. JONES of Washington. Yes.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Washington to the amendment reported by the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. JONES of Washington. Now, I move to strike out, on line 14, "1922" and in lieu thereof to insert "1923."

The amendment was agreed to.

The next amendment of the Committee on Commerce was, on page 3, section 2, line 16, after the word "who," to insert the words "in the judgment of the board," so as to make the proviso read:

Provided further, That the board shall not for the period of two years after the enactment of the merchant marine act, 1923, sell vessels operating on routes established by the board prior to the enactment of such act to persons other than those who in the judgment of the board have the support, financial and otherwise, of the domestic communities primarily interested in such lines.

The amendment was agreed to.

The next amendment was, on page 3, line 24, after the word "sales," to insert the words "and its assignment," so as to read:

(b) Such section is further amended by adding at the end thereof a new paragraph to read as follows:

"It is hereby declared to be the policy of Congress to discourage monopoly in the American merchant marine, and, in pursuance of this policy, the board is directed, in the development of its sales and its assignment policy, to continue as far as possible and practicable, subject to the provisions of this section, all existing steamship routes and regular services, and to endeavor in every way to bring about the permanent establishment of such routes and services, and their retention, as far as possible, in the hands of persons having the support, financial and otherwise, of the domestic communities primarily interested in such routes and services.

The amendment was agreed to.

The next amendment was, on page 7, line 8, after the word "appliances," to insert the following proviso:

Provided, That this section shall not apply to the construction or equipment of vessels by corporations of individuals primarily for the purpose of transporting their own products.

Mr. JONES of Washington. I desire to offer an amendment in lieu of that amendment. In lieu of the words proposed to be inserted, I move to insert the words found on page 8, beginning in line 14, of the bill as it was ordered reprinted last evening.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The READING CLERK. In lieu of the amendment appearing on page 7, lines 9 to 11 inclusive, it is proposed to insert a comma, and the words:

Except that no loan shall be made under this section to any person for use in the construction or equipment of a vessel to be operated primarily for the transportation of the property of the borrower or of any person affiliated with him within the meaning of subdivision (c) of section 409 of the merchant marine act, 1923.

Mr. FLETCHER. I think that is a very great improvement over the proposal now contained in the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Washington to the amendment of the committee.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. OWEN. Mr. President, I observe on page 72 of the bill, in section 711, the following provision:

Sec. 711. If any provision of this act or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the act and of the application thereof to other persons and circumstances shall not be affected thereby.

As I understand, it is intended to provide that the courts may set aside any part of this act which they think may be unconstitutional. Is that the idea?

Mr. JONES of Washington. I think that is the idea. I had not noticed that particular language. We usually have a provision like that referring to the unconstitutionality of any provision of a proposed act. I really had supposed that it related only to unconstitutionality, but I see that it is broader than that.

Mr. OWEN. It is broader than unconstitutionality; it covers validity.

Mr. JONES of Washington. I can hardly conceive, however, of a basis for holding a portion of the act invalid except upon the ground of unconstitutionality.

Mr. OWEN. It might be held invalid on the ground of public policy.

Mr. JONES of Washington. That would go ultimately to the unconstitutionality of the provision.

Mr. OWEN. It might be against public policy and not be unconstitutional.

Mr. JONES of Washington. I do not believe the court could hold a provision against public policy unless it based its opinion upon some provision of the Constitution.

Mr. OWEN. I think there have been cases where the court has determined questions of public policy.

Mr. JONES of Washington. I should have no objection, if the Senator would like to have the provision refer particularly to unconstitutionality, to having such language put in.

Mr. OWEN. I object to Congress itself inviting the courts in this way to declare that acts of Congress may be declared invalid in part or that they may be declared unconstitutional in part. I do not think the Congress ought to yield that right.

Mr. JONES of Washington. I suggest that the Senator offer any amendment that he may desire when we reach that provision.

Mr. OWEN. I will offer an amendment right now. In all events I want to make some remarks upon it, because I regard this as a very objectionable feature of this bill.

Mr. JONES of Washington. As far as offering an amendment is concerned, I should be glad if the Senator would wait until we reach that.

Mr. OWEN. I will offer the amendment at that time, but I wish now to call the attention of the Senate to it.

As the Senator from Washington very properly said, it has been not infrequently the case that Congress has put an amendment or a provision in a bill by which the bill was to be affected only in such part as the Supreme Court should hold unconstitutional. That has been done in a number of instances. In effect, it is an abdication by the Congress of the United States of its right to pass upon, and finally pass upon, the constitutionality of the acts passed by Congress. I do not think Congress has any constitutional right to abdicate its powers. In my judgment, it is a violation of the Constitution of the United States for the Congress of the United States to abdicate its right to determine the constitutionality of its own acts.

The Congress of the United States is composed of Representatives directly chosen from the people of the United States—in the House of Representatives every two years, and one-third of the Senate approximately every two years. They send these Representatives to represent them on the floor of Congress under the powers of the Constitution of the United States, and they have a right to expect of them that they will discharge their full duty under the Constitution.

The Constitution of the United States does not give to any court—district court, circuit court, or Supreme Court—the right to pass upon and declare unconstitutional the acts of the sovereign assembly of this Nation. I know perfectly well that all the law schools—the big law schools and little law schools—have taught the boys, all the boys, who go to law school that the Supreme Court has the right to nullify acts of Congress and set them aside; and it is not unnatural, it is to be expected, that the law schools should teach the boys who study law that this is the law. I deny that it is the law, however, and I deny the right of Congress to abdicate its powers and duties to

the people of the United States and permit its laws to be nullified by any court; and I want to present to this Record the reasons why I take that position. I say it is in effect an abdication by Congress of its own powers. This power of Congress in this matter has been passed upon on various occasions by the Supreme Court of the United States. I want to call the attention of the Senate to a few of these decisions.

In *Wiscart against Dauchey*, in 1796, a long time ago, and in *Durousseau v. United States* (6 Cranch, 307), in 1810, I wish to call the attention of the Senate to what the Supreme Court says in regard to the power of Congress. This latter was an opinion delivered by Chief Justice John Marshall.

In discussing the right of the court to pass upon the matter before the court in that case, the judge said:

The force of this argument is perceived and admitted. Had the judicial act created the Supreme Court without defining or limiting its jurisdiction it must have been considered as possessing all the jurisdiction which the Constitution assigns to it. The legislature would have exercised the power it possessed of creating a Supreme Court as ordained by the Constitution; and, in omitting to exercise the right of excepting from its constitutional powers, would have necessarily left those powers undiminished. The appellate powers of this court are not given by the judicial act. They are given by the Constitution. But they are limited and regulated by the judicial act and by such other acts as have been passed on the subject.

When the first legislature of the Union proceeded to carry the third article of the Constitution into effect, they must be understood as intending to execute the power they possessed of making exceptions to the appellate jurisdiction of the Supreme Court. They have not, indeed, made these exceptions in express terms. They have not declared that the appellate power of the court shall not extend to certain cases; but they have described affirmatively its jurisdiction, and this affirmative description has been understood to imply a negative on the exercise of such appellate power as is not comprehended within it.

In other words, John Marshall declared that the Congress of the United States even by giving affirmatively certain appellate powers to the Supreme Court must be construed as withholding those powers not expressly granted by the judiciary act, and Senators and Members of Congress apparently forget what the powers of the Congress of the United States really amount to.

It will be recalled by every Senator that the Constitution provides that Congress may make such exceptions and impose such regulations as to the jurisdiction of the Supreme Court as it sees fit. I wish to read the language of that section of the Constitution.

Article III, section 1, declaring the judicial power of the United States, says:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

And then it says:

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress may make.

When Congress voluntarily puts in an act a provision such as section 711 of this bill, practically inviting the court to pass upon the validity of any part of this measure, it is failing to make the exception which the public policy of this Republic requires.

I am not willing to see the Senate of the United States abdicate its constitutional powers. Section 711 should provide—

Mr. JONES of Washington. Mr. President, if the Senator will yield, I am perfectly willing to have the whole section stricken out.

Mr. OWEN. I wish now to discuss this matter. It is in the bill. It has been in bills here repeatedly, and I am no longer willing to have this kind of legislation passed without protest so long as I am a Member of this body.

Congress has no right to abdicate its duty to pass finally upon the constitutionality of the acts passed by the Congress itself. There should be put into this statute a provision that no appeal shall be permitted in any case in which the constitutionality of this act or of any other act of Congress is challenged, the passage by Congress of any act being deemed conclusive presumption of the constitutionality of such act. Any Federal judge who declares any act passed by the Congress

of the United States to be unconstitutional should be declared to be guilty of violating the constitutional requirement of "good behavior," upon which his tenure of office rests, and he should be held by such decision ipso facto to have yielded his office, and the President of the United States should be authorized to nominate a successor to fill the position vacated by such judicial officer.

I pointed out the case just called to the attention of the Senate, and there are a number of others of like purport and effect: The case of *United States v. Gordon* (7 Cranch 287); of *Daniels v. The Chicago, Rock Island & Pacific Railroad* (3 Wallace 250); in re *McCardle* (7 Wallace 510); *National Exchange Bank v. Peters* (144 U. S. 570); of *Col. C. C. M. v. Turck* (150 U. S. 138).

The abstract in the *McCardle* case is as follows:

1. The appellate jurisdiction of this court is conferred by the Constitution, and not derived from acts of Congress; but is conferred "with such exceptions, and under such regulations, as Congress may make"; and, therefore, acts of Congress affirming such jurisdiction have always been construed as excepting from it all cases not expressly described and provided for.

2. When, therefore, Congress enacts that this court shall have appellate jurisdiction over final decisions of the circuit courts in certain cases the act operates as a negation or exception of such jurisdiction in other cases, and the repeal of the act necessarily negatives jurisdiction under it of these cases also.

3. The repeal of such an act, pending an appeal provided for by it, is not an exercise of judicial power by the legislature, no matter whether the repeal takes effect before or after argument of the appeal.

4. The act of 27th of March, 1868, repealing that provision of the act of 5th of February, 1867, to amend the judicial act of 1789, which authorized appeals to this court from the decisions of circuit courts in cases of habeas corpus, does not except from the appellate jurisdiction of this court any cases but appeals under the act of 1867. It does not affect the appellate jurisdiction which was previously exercised in cases of habeas corpus.

Mr. President, there are so many lawyers, there are so many men who have been trained as lawyers, so many men who have gotten their degrees from law schools, who regard it as an act of lese majeste to question the right of the Supreme Court of the United States to declare unconstitutional and void any act of Congress they may see fit, that I think it is worth while to emphasize to the Senate the decision of the Supreme Court itself as to the powers of Congress over the jurisdiction of the Supreme Court, because it must always be remembered that the Supreme Court's jurisdiction in so far as ambassadors and public ministers are concerned is almost negligible in number and is entirely negligible in importance, because none of the great questions which have shaken this Republic to its foundation, passed upon by the Supreme Court, lie within the rule of that original jurisdiction of the Supreme Court under the Constitution.

The Chief Justice, delivering the opinion of the court in the case of *Ex parte McCardle*, said:

The first question necessarily is that of jurisdiction, for if the act of March, 1868, takes away the jurisdiction defined by the act of February, 1867, it is useless, if not improper, to enter into any discussion of other questions. It is quite true, as was argued by the counsel for the petitioner, that the appellate jurisdiction of this country is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution, but it is conferred with such exceptions and under such regulations as Congress shall make.

That "but" and that phrase put into the Constitution of the United States, "with such exceptions and under such regulations as Congress shall make," makes it incumbent upon the Congress of the United States, makes it the duty of the Senate of the United States, not only not to pass such legislation as is found in this bill, page 73, section 711, but if anything is put in, to put in the contrary expression, that this act shall not be declared invalid, in whole or in part, by the judiciary. The judiciary is not the law making power of this Republic. Their function is to interpret the laws which have been passed by the Congress of the United States, and interpret the laws in accordance with the meaning of the Congress of the United States, and before I shall conclude I am going to call the attention of the Senate to some of the most disastrous decisions made by the Supreme Court in the past, and the effect upon this Republic.

The Chief Justice, continuing, said:

It is necessary to consider whether, if Congress had made no exceptions and no regulations, this court might not have exercised general appellate jurisdiction under rules prescribed by itself. For among the earliest acts of the First Congress, at its first session, was the act of September 24, 1789, to establish the judicial courts of the United States. That act provided for the organization of this court and prescribed regulations for the exercise of its jurisdiction.

The source of that jurisdiction and the limitations of it by the Constitution and by statute have been on several occasions subjects of consideration here. In the case of *Durousseau against The United States*, particularly, the whole matter was carefully examined, and the court held that while "the appellate powers of this court are not given by the judicial act but are given by the Constitution," they are nevertheless "limited and regulated by that act and by such other acts as have been passed on the subject." The court said, further, that the judicial act was an exercise of the power given by the Constitution to Congress "of

making exceptions to the appellate jurisdiction of the Supreme Court." "They have described affirmatively," said the court, "its jurisdiction, and this affirmative description has been understood to imply a negation of the exercise of such appellate power as is not comprehended within it."

The Supreme Court has been tender in the exercise of the jurisdiction granted by the Congress of the United States. I have the greatest respect for that court, and nothing I shall say or that I have said can ever be regarded as showing any want of the highest regard and respect for that honorable body. There is no court in the world, I think, with a finer record than that court. That does not alter a particle what I am saying with regard to the duty of Congress to assume and to exercise the constitutional powers of Congress and not to abdicate those powers. Congress has in a way abdicated them. Over and over again they have abdicated them, and over and over again they have passed bills with just this kind of vicious provisions in them. Of course with Congress maintaining that attitude the Supreme Court is going to continue to exercise this jurisdiction. They would not think of doing so if the Congress of the United States would by proper means indicate to them the dissent of Congress to their exercising any such appellate jurisdiction.

The Chief Justice, continuing in the case of *McArdle*, said: The principle that the affirmative appellate jurisdiction implies a negation of all such jurisdiction being affirmed, having been thus established, it was an almost necessary consequence that acts of Congress providing for the exercise of jurisdiction should come to be spoken of as acts granting jurisdiction.

I emphasize that language, "spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it."

The Chief Justice, continuing, said:

The principle that the affirmation of appellate jurisdiction implies the negation of all such jurisdiction not affirmed having been thus established, it was an almost necessary consequence that acts of Congress, providing for the exercise of jurisdiction, should come to be spoken of as acts granting jurisdiction, and not as acts making exceptions to the constitutional grant of it.

The exception to appellate jurisdiction in the case before us, however, is not an inference from the affirmation of other appellate jurisdiction. It is made in terms. The provision of the act of 1867, affirming the appellate jurisdiction of this court in cases of habeas corpus is expressly repealed. It is hardly possible to imagine a plainer instance of positive exception.

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We can not doubt as to this. Without jurisdiction the court can not proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

Several cases were cited by the counsel for the petitioner in support of the position that jurisdiction of this case is not affected by the repealing act. But none of them, in our judgment, afford any support to it. They are all cases of the exercise of judicial power by the legislature, or of legislative interference with courts in the exercising of continuing jurisdiction.

On the other hand, the general rule, supported by the best elementary writers, is, that "when an act of the legislature is repealed, it must be considered, except as to transactions past and closed, as if it never existed." And the effect of repealing acts upon suits under acts repealed, has been determined by the adjudications of this court. The subject was fully considered in *Norris v. Crocker*, and more recently in *Insurance Co. v. Ritchie*. In both of these cases it was held that no judgment could be rendered in a suit after the repeal of the act under which it was brought and prosecuted.

It is quite clear, therefore, that this court can not proceed to pronounce judgment in this case, for it has no longer jurisdiction of the appeal; and judicial duty is not less fitly performed by declining ungranted jurisdiction than in exercising firmly that which the Constitution and the laws confer.

Counsel seem to have supposed, if effect be given to the repealing act in question, that the whole appellate power of the court, in cases of habeas corpus, is denied. But this is an error. The act of 1868 does not except from that jurisdiction any cases but appeals from circuit courts under the act of 1867. It does not affect the jurisdiction which was previously exercised.

Now, in this case the Congress of the United States by an act withdrew from the Supreme Court of the United States the right to pass upon this particular line of habeas corpus cases. The Supreme Court very properly held that Congress has the right to make exceptions and to make regulations with regard to cases pending in the Supreme Court.

As I said, the law schools have been teaching thousands of boys to be lawyers, and have been teaching them that the Constitution established three coordinate, coequal branches of the Government. This is a fundamental error because there were established three coordinate, but not coequal, branches of the Government.

It is extremely important to realize the huge powers and duties of the Congress.

The sovereign law-making power of the people, so far as they have delegated such power, is vested expressly in Congress, using these the words of the Constitution:

to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof.

Congress by statute established a Supreme Court and the executive departments, and fixed their powers in accordance with the Constitution and in accordance with the power vested in Congress as the law-making power. Congress fixed the number of judges of the Supreme Court. It can add to that number now, or it can diminish the number by an act of Congress. Why, Mr. President, the Congress of the United States, if it desired, could double the number of judges in that court. It could increase the number of judges on that court from the present number to 20 or to 25 or to 48 or to 148. It could add to the number just as it sees fit, and could diminish the number just as it sees fit. To say that the Supreme Court has coequal power with the Congress of the United States is obviously preposterous.

It will be remembered in the legal tender case, when the legal tender act was declared unconstitutional by the Supreme Court, that President Grant put on two additional members of the court who thought that the legal tender act was constitutional and reversed the Supreme Court by that process.

The Supreme Court is not a coequal body with Congress and should not be so regarded. It has the highest dignity, the highest honor, and highest respect as a court, but no power to be compared with the powers of the Congress of the United States. Congress, of course, fixes the compensation of the judges of the Supreme Court, could increase the compensation, could diminish it, could make it very large, could make it very small. It has power over the living of the judges who serve in that capacity. I am speaking of power and only of power. I am challenging the claim that the Supreme Court is coequal with Congress.

Congress, through the Senate, confirms the justice of the Supreme Court before he can take his seat. It in this way creates him a justice. Congress can impeach the Supreme Court and remove the court from office. That court could not very well remove Congress from office.

I am speaking of power, relative power, the power given under the Constitution to the Congress of the United States as compared with the power given to the Supreme Court by the Constitution. The only power they were given under the Constitution was to have appellate power with such exceptions as Congress saw fit to make, and the negligible original jurisdiction in cases where a State was involved or where ambassadors or foreign ministers were involved. I think there have only been about 25 such cases since the foundation of the Government. Congress under the Constitution was expressly charged with fixing the appellate jurisdiction of the Supreme Court, and the statutory jurisdiction is all the jurisdiction the court has worth mentioning. Take all their dockets and we would find not one case of original jurisdiction while we would find 500 cases under the appellate jurisdiction given by Congress, given by the Senate of the United States and the House of Representatives.

Congress has the duty imposed upon it under the Constitution to fix that appellate jurisdiction and make such exceptions and such regulations as Congress sees fit to make, and one of the exceptions which I insist shall be made is that the Supreme Court shall not nullify any part of any act passed by the Congress of the United States, and shall not declare any act unconstitutional and shall not assume to declare national policies. It is said that the Congress may make mistakes and therefore the mistakes should be rectified by the court. Yes; that is a possible suggestion. It might make mistakes. It is less apt to make mistakes than a smaller number of conscientious God-fearing men discharging their duty to the Republic.

In the only important differences that have ever arisen between the Congress of the United States and the Supreme Court, so far as I can recall at this moment, the Supreme Court was positively wrong and adopted a policy highly mischievous to the Republic, as in the case of the *Dred Scott* decision, which led immediately to the bloody Civil War of 1861-65; as in the legal tender case; as in the income tax case. I am talking of the power of Congress under the Constitution as contained in the Constitution, without modifying its meaning, without putting a strained interpretation upon it. I am talking of power alone. I shall talk presently of the duty of exercising that power and give reasons why I think the time has come to exercise it.

The Constitution, Article I, section 1, declares the full powers vested in Congress. I wish Senators would listen to these powers of Congress:

All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.

It gave the House of Representatives and the Senate power to impeach any officer of the United States, including judges.

It gave the Senate power to sit as a high court of impeachment over judges and all other Federal officials.

It gave the Senate the right to advise with the President of the United States and confirm the appointment of all officers of the United States, including judges.

It gave each House authority to determine its own membership and its own proceedings.

It exempted the Members of the Senate and the House from arrest by judges, except for treason, felony, or breach of the peace.

It provided that they should not be questioned in any place about any speech or debate in either House, not even by judges.

The Constitution gave Congress the power to lay and collect taxes, duties, imposts, and excises, to pay debts and pay for the common defense and general welfare of the United States.

To borrow money, and Congress has borrowed billions under this authority and power given by the Constitution of the United States.

To regulate commerce, and it has regulated commerce to the extent of hundreds of millions of dollars and it is regulating commerce now on a gigantic scale.

To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies.

To coin money, to regulate the value thereof and of foreign coins, and to fix the standard of weights and measures.

To punish counterfeiters; to establish post offices and post roads, and under that one single line the United States is expending approximately \$400,000,000 a year right now.

To grant patents and copyrights. Over a million of such patents have been issued.

To constitute tribunals inferior to the Supreme Court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and to make rules concerning captures on land and water.

To raise and support armies. And under that one line of the Constitution the Congress of the United States on June 5, 1917, called to the colors 10,000,000 men.

I am talking about power as between the so-called coequal branches of this Government. The Supreme Court has no power but what Congress gives it in the appellate jurisdiction, affirmatively gives it under its own decisions which I have just read to the Senate. I am reading now the powers of Congress, which are gigantic and unlimited.

To provide and maintain a Navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the Union, suppress insurrection, and repel invasions.

To provide for organizing and disciplining the militia and for governing such part of them as may be employed in the service of the United States.

To exercise authority over all places purchased by Congress, carrying into execution the foregoing powers and all other powers vested by the Constitution in the Government of the United States or in any department or officer thereof, including the judicial department.

The Constitution expressly provides that Congress shall not do certain things. For instance:

It forbade interference with the slave trade up to 1808.

It forbade the suspension of the writ of habeas corpus except where the public safety required it.

It forbade a bill of attainder or ex post facto law.

It forbade a capitation or other direct tax on the States unless in proportion to the census.

It forbade an export duty.

It forbade a preference to be given to the port of one State over another.

It forbade expenditure of money except by lawful appropriations.

It forbade titles of nobility.

And the people refused to ratify that Constitution until the Bill of Rights in the 10 amendments was agreed to be added to that Constitution and made a part of it. In that Bill of Rights were reserved the various rights of the people which Congress was charged with the duty of defending.

The first of those rights was freedom of religion. The gentlemen who first wrote the Constitution forgot to put that in, and it was added as an after matter.

Free speech and a free press. The gentlemen who wrote the Constitution forgot to put those provisions in. Thomas Jefferson and other men of his opinions demanded that they go in.

Free right of assembly.

Free right of petition for redress of grievances. The gentlemen who wrote that Constitution forgot to put those things in.

The right of the States to have troops.

The right of the people to keep and bear arms.

The right of the people to be free from the quartering of soldiers upon them.

Freedom from unlawful searches and seizures.

Freedom from arrest for crime except on indictment.

The right of life, liberty, and property not to be interfered with except by due process of law.

The right against taking private property for public use without just compensation.

The right to speedy public trial by an impartial jury.

The gentlemen who wrote the Constitution forgot to put all those things in, but when they went home and heard from the people it became evident that it was necessary to put these provisions in the Constitution, and afterwards all of these provisions were written into the bills of rights of the several 48 States. All of the States which succeeded the blending together of the first 13 States put in their bills of rights these great fundamental provisions of human rights. Those already recited and—

The right to be informed of the nature of the accusation against a citizen.

The right to be confronted with witnesses against a citizen.

The right of compulsory process for obtaining witnesses.

The right to have counsel in the defense of the rights of a citizen.

The right to a trial by jury.

The right against excessive bail, excessive fines, or cruel or unusual punishment.

These were the rights which were omitted and which, as I have said, were subsequently written into the Constitution in the first 10 amendments, and afterwards written into the bills of rights of the 48 States.

Those who opposed the idea of having the Congress of the United States declare finally the constitutionality of an act always go back and quote Alexander Hamilton and Gerry and men of that class who were among those who were active in writing the original Constitution without the 10 amendments; they were reactionaries; but, Mr. President, progressive Democrats, progressive Republicans, and progressive men everywhere throughout the world believe that the people ought to have the right to rule in their own country and that they ought not to be governed without their consent. The people took very good pains in the Constitution to require the entire House of Representatives and one-third of the Senate every two years to come before them and give an account of their stewardship and receive the approval of the people before they continue the duty of making laws for the people. Not only that, but the people kept in their own hands the sovereignty which was declared vested in them by the Bill of Rights in every one of the 48 States of the Union.

On the 31st of July, 1911, I put in the CONGRESSIONAL RECORD an extract from the constitutions of each of the 48 States on this very point, because at that time when the Standard Oil decision was rendered I made a demand for the control of the Federal judiciary and put in the RECORD then the power which the people of this country still retained over the State judiciary. The people kept control of Congress, and when Congress passes a law in pursuance of the Constitution the Congress itself declares that law to be the supreme law of the land and does not say that the law may be declared void by the judges. Unhappily, Congress not having in express terms forbidden this unwise practice, Congress may be fairly held to have acquiesced in it, and when it put in a law such a provision as section 711, on page 72 of the pending measure, which is a bill to amend and supplement the merchant marine act of 1920, Congress is again doing the very thing which I have for so long regarded as a bad—an unendurable—practice, and one which ought no longer to be supported.

Mr. President, the Constitution of the United States requires every Senator and every Representative in Congress to take a solemn oath to support faithfully and truly the Constitution of the United States. When on their oaths Members of the House of Representatives and of the United States Senate, with the approval of the President of the United States, pass an act, a conclusive presumption arises that the act is constitutional, and this presumption can only be overthrown by the disapproval of the people of the United States, who will return a new Congress to correct any unconstitutional or impolitic act of an expiring Congress.

Mr. President, I wish to call the attention of the Senate to the supremacy of the legislative powers of the legislative assemblies of other nations. No civilized nation permits the judges

on the bench to declare unconstitutional or void the acts of their parliaments. Great Britain, on February 6, 1700, declared that judges should hold their offices "while they behaved themselves well," subject alone to removal by resolution of Parliament. This control of the judges sufficed. That is what I proposed in 1911 for the United States. I thought the time had then come for that rule in the United States.

France does not permit the laws of her Parliament to be set aside by the French judges. No French judge would dare to declare an act of the French Parliament void or invalid in part, as this bill proposes to permit.

Italy in her written constitutional law provides that the judges shall not set aside an act of Parliament.

Austria does not permit judges to set aside an act of the Austrian Parliament.

Germany does not allow the judges of Germany to set aside an act of the Reichstag.

Belgium does not permit her judges to set aside the law of Belgium.

Denmark does not permit her judges to set aside the laws of the legislature of Denmark.

Australia does not permit it; New Zealand does not permit it.

I speak of these things because the civilized world which has considered government by the people has all agreed upon this doctrine, and there must be sound reason for this unanimous opinion of mankind. It is not an accident; it is written out of the blood and tears of centuries.

Why, Mr. President, the English nation over 200 years ago decided that no longer should judges set aside the laws of Parliament.

It is true that in the Constitutional Convention in 1788 several lawyers of distinction and privilege contended that the contemplated Supreme Court of the United States should have the right to declare acts of Congress unconstitutional. Daniel Webster, Oliver Ellsworth, John Marshall, and Alexander Hamilton made the argument, and they made it on behalf of the great property holders of their States, with a view to getting their support for the Constitution, because the Constitution needed friends at that time; but John Marshall, who spoke equally well on either side of the case, defended the Constitution against the charge of Patrick Henry that it would establish a judicial despotism by the following: I should like you to listen to John Marshall, because he is the patron saint of all the gentlemen who differ with me on this question.

Here is what John Marshall said:

Congress is empowered to make exceptions to the appellate jurisdiction as to law and fact of the Supreme Court. These exceptions certainly go as far as the legislature may think proper for the interest and liberty of the people. (Elliott's Debates, vol. 3, p. 560.)

This was said in the Constitutional Convention that framed the Constitution of the United States, and will be found in Elliott's Debates, volume 3, page 560.

The plain truth is, the people of the American Colonies who lived under the English practice recognized as a fixed principle of government that the judiciary is subject to the legislative power of the people. The English law that I referred to a moment ago was to that effect, and that law was the law of the Colonies, which they perfectly well understood. It is true that Rhode Island did about this time pass an act which its supreme court declared unconstitutional. It is also true that the legislature put the court out of office for that reason.

It is true that two or three other States had a similar experience, and the court was rebuked by the people for its conduct in this matter; but in more recent years the bad practice of the Congress of the United States has led to an extension of this practice, more or less, in some of the States. The Legislature of New Hampshire removed its supreme court four times on the ground of policy.

On July 31, 1911, in Congress, and before the Bar Association of Oklahoma on the 23d day of December, 1911, I explained the extraordinary pains the people of the United States have taken to prevent the usurpation of their power by the judges.

Mr. President, 48 States have two ways of removing judges by impeachment, and either by a short tenure of office or by resolution of the legislature. Thirty-two States have three ways of removing judges. Thirty-two States may remove judges by resolution of the State legislature. Seven States have four ways of removing judges, viz, impeachment, legislative recall, short tenure of office, and popular recall.

They started the popular recall in Oregon, first, because of the gross aggression of the railroad interests and other private interests of the State, which had corrupted practically their whole government in the interest of property against the people. The recall was applied to all officials; no exception was made as to judges. The judges of that State now would compare favor-

ably with those of any other State. They did the same thing in California recently for the same reason, when the present senior Senator from California [Mr. JOHNSON] was making his campaign for governor and winning overwhelmingly, when the chief issue was the recall of judges and on the slogan that "the Southern Pacific has got to go out of the governing business in California."

Forty-five States recall judges by a short tenure of office, and all the States—the 48 States—have the right of impeachment. No one ever hears any complaint of our State judiciary for the very reason the judiciary is in sympathy with the people and serves them acceptably.

The people are overwhelmingly opposed to the usurpation of legislative power by the Federal judiciary appointed for life.

Nobody knew better than John Marshall himself that the Supreme Court had no right to declare an act of Congress void under the Constitution, for in the case of Ware against Hilton John Marshall stated—and I ask you to listen to the patron saint of the opposition, Mr. Marshall. He said:

The legislative authority of any country can only be restrained by its own municipal constitution; this is a principle that springs from the very nature of society, and the judicial authority can have no right to question the validity of a law unless such jurisdiction is expressly given by the constitution.

The word "municipal," of course, is used in this text in the broadest sense.

This is John Marshall. And nobody pretends that there is any express provision in the Constitution of the United States conferring any such authority.

The highest authority on English and American law has been Sir William Blackstone. He is the one that all law clerks, law schools, and law students swear by. Listen to Sir William. He says:

When the main object of a statute is unreasonable the judges are not at liberty to reject it, for that were to set the judicial power above that of the legislature, which would be subversive of all government. (Blackstone's Commentaries, p. 85, sec. 3.)

Thomas Jefferson had a view full of apprehension after John Marshall came on the bench.

The Congress did not rebuke Marshall for the Marbury against Madison case, and Thomas Jefferson did not see the way clearly how to protect the country against that aggression, but this is what he said:

It has been my opinion that the germ of dissolution of our Federal Government is in the constitution of the Federal judiciary, an irrepressible body working like gravity by day and by night, gaining a little to-day and a little to-morrow and advancing with a noiseless step like a thief over the field of jurisdiction, until all shall be usurped. (Federal Law Journal, vol. 66, p. 293.)

Evidently Jefferson did not observe the power of Congress to limit the appellate jurisdiction of the court. If he had, he would not have been afraid at all of the court. The country is in no danger from the Supreme Court or from any other court. The Constitution of the United States is all right. It was written all right. It only needs to be interpreted properly; it only needs to be exemplified and made to accomplish the ends for which it was intended.

Mr. President, Andrew Jackson is another authority to whom I want to call your attention. He said of John Marshall and one of his famous decisions:

John Marshall has rendered his decision. Now let us see him enforce it.

That is what Jackson said, but I want to quote you the language of Jackson in the case of the Bank of United States. Jackson said this:

It is maintained by the advocates of the bank that its unconstitutionality, in all its features, ought to be considered as settled by precedent and by the decision of the Supreme Court. To this conclusion I can not assent. * * * If the opinion of the Supreme Court covered the whole ground of this act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the court must each for itself be guided by its own opinions of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it and not as it is understood by others. It is as much the duty of the House of Representatives, of the Senate, and of the President to decide upon the constitutionality of any bills or resolutions which may be presented to them for passage or approval as it is of the Supreme Court, when it may be brought before them for judicial decision. The opinion of the judges has no more authority over Congress than the opinion of Congress has over the judges; and on that point the President is independent of both. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive when acting in their legislative capacities, but to have only such influence as the force of their reasoning deserve. (Senate Journal, July, 1832, p. 451.)

President Jackson overlooked the fact that Congress has the power to impeach the President and the Supreme Court, and that Congress therefore exercised the sovereign lawmaking power of the people, but he states correctly that "the Supreme Court must not be permitted to control the Congress."

President Jackson overlooked the power of Congress to control the appellate jurisdiction of the Supreme Court, which would make it impossible for the Supreme Court to put itself in mischievous conflict with the sovereign lawmaking power of the Nation.

Abraham Lincoln resisted the Dred Scott decision and said that he would not oppose the decision as far as it related to the slave individually, and then he said these memorable words:

But we, nevertheless, do oppose that decision as a political rule which shall be binding on the voter to vote for nobody who thinks it wrong; which shall be binding on the Members of Congress or the President to favor no measure that does not actually concur with the principles of that decision. * * * We propose so resisting it as to have it reversed, if we can, and a new judicial rule established upon this subject. (Works of Jefferson, vol. 12, p. 163.)

Well, he had some trouble in reversing it. It took the bloodiest war in our history to reverse it, and four years of fratricidal strife, and billions of treasure; with grief, sorrow, heartburning, and bitter hatred that lasted for generations.

It is hard to reverse the decisions of the Supreme Court by that kind of a method, but it was reversed by war. They declared in the Dred Scott decision that slavery was a constitutional right; that Congress had no right to change that constitutional right; that Congress had no right to pass the Missouri compromise law; that Congress violated the Constitution of the United States when it passed the Missouri compromise law on slavery.

The decision inflamed the North and led to the withdrawal of the Southern States and to war.

Mr. President, I want to call attention to the Constitutional Convention of 1788 and what was said and done there in regard to the right of the Supreme Court of the United States to declare acts of Congress unconstitutional either before or after the passage of such acts.

In the Constitutional Convention which framed this United States Constitution, Edmund Randolph, on June 4, 1787, proposed the following resolution:

Resolved, That the Executive and a convenient number of the national judiciary ought to compose a council of revision, with authority to examine every act of the National Legislature before it shall operate * * * and that the dissent of said council shall amount to a rejection unless the act of the National Legislature be again passed. (Elliott's Debates, vol. 1, pp. 159, 164, 214.)

They did not propose to finally veto an act of Congress and never let it go into effect. They only proposed that the judiciary, with the Executive, should have a temporary veto, and if Congress insisted upon passing a measure, to let it be the law, but even that moderate proposition was three times defeated and never received the vote of over 3 States out of the 13.

A like proposition was also rejected August 5, 1787. (Elliott's Debates, vol. 1, p. 243.)

Only 11 members of the Constitutional Convention out of 65 favored giving the judiciary any control. These were Blair, Gerry, Hamilton, King, Mason, Morris, Williamson, Wilson, Baldwin, Brearly, and Livingston.

Hamilton, Morris, Gerry, and several others of this group were known to be strongly opposed to democracy.

George Washington, Charles Pinkney, James Madison, and many others, 22 in number, are known to have expressly opposed any judicial veto. There were 65 members and only 11 on record as favoring any form of judicial interference with the legislative powers. (This is fully set up in Davis on Judicial Veto, p. 49.)

The Constitution, however, speaks for itself; it puts the sovereign power in Congress, the power to control the appellate jurisdiction, and thus to prevent the exercise of the judicial veto, if it is attempted.

The judicial veto has been attempted.

It has been exercised. It has been exercised with the acquiescence of Congress, an acquiescence which Congress has no right to make. The judicial veto has proven to be highly mischievous in our history, and it has become unendurable.

Mr. President, I want to call attention to the first case in which the Supreme Court undertook to set up the right to declare an act of Congress unconstitutional. It was the case of *Marbury v. Madison*, when John Marshall was Chief Justice of the United States.

John Marshall was a federalist, an aristocrat, a reactionary, a man of considerable ability, with a consuming desire for power, great tenacity of purpose, and a great hatred for Thomas Jefferson and his doctrines.

John Adams, the federalist, took advantage of the election of Jefferson, the democratic republican, to put John Marshall, the federalist, on the bench as Chief Justice for life, as one of his last acts before he turned over the Government to Thomas Jefferson. Keep that in mind, because it meant trouble, and here comes the first trouble. In *Marbury v. Madison*

John Marshall violated the first principles of government of the English-speaking people in assuming the right to declare void the will of the National Legislature.

Congress, under Article III, section 1, in distributing the judicial powers of the United States, when it established the Supreme Court by the judiciary act of 1789, gave the Supreme Court, wisely and justly and lawfully, in addition to its "original" jurisdiction, the right to issue a writ of mandamus as a part of the judicial powers of the United States. A little citizen having a case against a great Cabinet officer could hardly expect to get his relief from a small subordinate officer of the judiciary department. When he makes a demand on the Secretary of State for his right, as *Marbury* did, he ought to have the backing of the very highest judicial authority, one that can speak to the Secretary of State on terms of some comparative equality.

John Marshall struck down that right on the claim that Congress had no right to add to the "original" jurisdiction of the Supreme Court. Congress did not add anything to the "original" jurisdiction of the Supreme Court. The Constitution placed the judicial powers of the United States in the Supreme Court and in such inferior courts as Congress should establish, and Congress, in pursuance of that authority, gave the right of issuing the writ of mandamus to the Supreme Court, as it had a plain constitutional right to do.

A citizen named *Marbury*, in the District of Columbia, had been appointed notary public by the retiring administration; his commission had been made out; it had been signed by the President, by the Secretary of State, had the seal on it, and was lying on the table of the Secretary of State for delivery. The incoming Secretary of State refused to deliver it, and *Marbury* went to John Marshall, Chief Justice of the Supreme Court of the United States, and asked to have a writ of mandamus issued on the Secretary of State to deliver that commission. John Marshall said "no"; that Congress had no right to authorize the Supreme Court to issue writs of mandamus; that that was unconstitutional on the part of Congress. And when he refused that jurisdiction of a writ of mandamus he seized the power to declare an act of Congress void, and, therefore, attempted to make himself the judicial ruler of the United States by exercising a judicial veto over Congress.

The Congress of the United States ought then and there to have impeached John Marshall. He was guilty of a violation of the true meaning of the Constitution; he himself in that act, as a judicial officer, violated the spirit and purpose and meaning of the Constitution, and he assumed the sovereign power over the legislative agents of the people of the United States. He held office for life, and there was no way for the people to get at him except by impeachment. A great many men who would think he was wrong in his opinions, who would think that he had done very wrong, would hesitate long before they would use that drastic power, which exercised over a Supreme Court judge blasts his name for all history. The remedy would appear too drastic for the offense, because, after all, the Congress can prevent the recurrence of that kind of thing simply by using the power given to it by the Constitution of the United States.

Jefferson did not hesitate to denounce Marshall as a thief of jurisdiction, and Marshall never repeated that offense.

It was 53 years before it was repeated, in 1856, and then, in the *Dred Scott* case, it caused the enormous catastrophe of the great Civil War between the Northern and the Southern States.

The next mischievous step taken by John Marshall of national importance was in *Fletcher v. Peck*, where an act of the Georgia Legislature correcting a previous fraud was declared "unconstitutional." In this case the Legislature of Georgia had been deliberately corrupted with money by four land companies and induced to pass an act conveying, without adequate compensation, an enormous grant of land, some 40,000,000 acres, belonging to the people of Georgia. The people of Georgia were enraged over it. They came together, turned out the legislature; they elected a new legislature; the new legislature immediately repealed the act. It came up before John Marshall's court, and after solemnly considering it he decided that a State did not have the right to pass an act "impairing the obligation of a contract." The most mischievous consequences followed. It was only necessary thereafter to corrupt a legislature and get the grant made—that settled it forever.

Since that time many courts have announced a wiser principle: That fraud vitiates a contract; that it is no contract when it is obtained corruptly.

A far more dangerous opinion followed this *Fletcher v. Peck* case. It was the *Dartmouth* case—a case that did not seem to be of any importance at all. The Legislature of New Hampshire

passed an act increasing the number of trustees of Dartmouth College. The old trustees were Federalists, the new trustees anti-Federalists. Marshall and Washington were Federalists; they opposed the act of the legislature. Duval and Todd supported the legislature. Marshall succeeded in preventing a decision at that term, and by a political campaign the other three judges—Johnson, Livingstone, and Storey—were persuaded to agree with Marshall. (Life of Webster, by Lodge, p. 1-88.)

Listen to these words. Mr. LODGE says:

The whole business was managed like a quiet, decorous, political campaign.

Chancellor Kent says the decision in that case did more than any other single act proceeding from the authority of the United States to throw an impregnable barrier around all rights and franchises derived from the grant of government. (Kent's Commentaries, p. 419.)

Fifty years later Mr. Chief Justice Cole, of the Iowa Supreme Court, said:

The practical effect of the Dartmouth College decision is to exalt the rights of the few above those of the many. And it is doubtless true that under the authority of that decision more monopolies have been created and perpetuated and more wrongs and outrages upon the people effected than by any other single instrumentality of the Government. (Dubuque v. Ry. Co., 39 Iowa, 95.)

Judge Cooley, the great constitutional lawyer, said of this case:

It is under the protection of the decision of the Dartmouth College case that the most enormous and threatening powers in our country have been created. Some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country, than the States to which they owe their corporate existence. Every privilege granted, or right conferred—no matter by what means or on what pretense—being made inviolable by the Constitution, the Government is frequently found stripped of its authority in very important particulars by unwise, careless, and corrupt legislation; and a clause of the Federal Constitution whose purpose was to preclude the repudiation of debts and just contracts, protects and perpetuates the evil. To guard against such calamities in the future, it is customary now for the people in forming their constitutions, to forbid the granting of corporate powers except subject to amendment and repeal, but the improvident grants of an early day are beyond their reach. (Cooley on Con. Lim. 279.)

When the Supreme Court declared the Missouri compromise, passed by Congress, unconstitutional and slavery a constitutional right it took a frightful war to settle the error of this judicial usurpation.

When the Supreme Court declared the legal tender act void they took from the Government, or they would have taken from the Government if the case had been permitted to stand, one of the strongest instrumentalities for the protection of the great Republic in the time of war.

This gross error was corrected by reversing it. General Grant did that by appointing two new judges in favor of the legal tender act, whose votes corrected the error of the Supreme Court by reversing the previous decision. It was an undignified remedy but better than none. Congress has this right now, but the American people do not and will not approve any such practice. The judges on the Federal bench ought to represent the matured judgment and will of the American people.

INCOME TAX CASE.

When the Supreme Court declared the income tax void and transferred the taxes from the wealth of the country, which is protected by the expenditure of such taxes, it disregarded the will of the people of the United States and of Congress, vetoed the action of the House of Representatives, of the United States Senate, and of the President, reversed the decisions of the Supreme Court of the United States for a hundred years, and it took the people 16 years to correct it by a constitutional amendment, at a cost to the consuming masses of over \$1,600,000,000.

Mr. President, it was not necessary to have the constitutional amendment at all. All in the world that was required was another act withdrawing from the Supreme Court the right to pass upon the constitutionality of that act, and notify judges of the inferior courts that it should not be questioned in their hearing.

When the Supreme Court declared the Sherman antitrust law only intended to prohibit unreasonable restraint of trade, they rendered the act nugatory and void. The effect of this decision was to enthrone monopoly and to raise the cost of living.

The remedy which I have proposed is very simple. The Constitution gives Congress all the power necessary. All that Congress has to do is to pass a suitable resolution. The Constitution gives Congress entire control of the appellate jurisdiction of the Supreme Court in these words:

In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned

the Supreme Court shall have appellate jurisdiction both as to law and fact, with such exception and under such regulation as the Congress shall make.

The power of Congress in this matter was passed on in the case of William H. McCordle, an editor in southern Mississippi, arrested by Major General Ord who was putting into effect the reconstruction act in 1868. McCordle sued out a writ of habeas corpus from the circuit court to the Supreme Court of the United States. The Supreme Court refused to exercise appellate jurisdiction and dismissed the case on the ground that Congress had withdrawn appellate jurisdiction in such habeas corpus cases, and that Congress had the constitutional power to do so. It was a unanimous opinion.

I have quoted eight cases of like purport in the Record to-day.

The court said in the McCordle case:

We are not at liberty to inquire into the motives of the legislature. We can only examine into its power under the Constitution, and the power to make exceptions to the appellate jurisdiction of this court is given by express words.

What, then, is the effect of the repealing act upon the case before us? We can not doubt as to this. Without jurisdiction the court can not proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist the only function remaining to the court is that of announcing the fact and dismissing the cause. And this is not less clear upon authority than upon principle.

It is obvious, therefore, that we have no occasion to discuss the past history of the Supreme Court on the point of whether they have usurped jurisdiction in declaring congressional statutes void. We need not go into the past. We might say that since Congress has permitted the right without protest to pass upon acts of Congress, that it was not unreasonable that the justices should think themselves justified in exercising the power of saying an act of Congress was unconstitutional. I am willing to acquiesce in that for the purpose of the argument but not historically. My proposition deals with the future, not the past.

I have demonstrated without the possibility of a doubt that this power is in Congress, and conceded to be in Congress by a unanimous opinion of the Supreme Court of the United States.

I call attention to that very interesting fact, which appears to be entirely forgotten by lawyers in this body.

Mr. President, I respect and honor that great court; I respect the learned and able gentlemen who comprise that court, individually and personally; I believe in their integrity of mind; I believe in their learning; I believe in their high personal honor; but I tell you also that I believe when you have a jury of Irishmen you will get a home-rule decision.

All men are fallible. Even judges are fallible. On the Supreme Court every season cases are decided by the hundreds, as the term goes by, in which constantly there is a minority of judges on one side and a majority of the judges on the other, and every time the majority decides a case against the minority there is a judicial ascertainment by the Supreme Court of the United States as to the fallibility of each one of the members on the minority, and there is not a week that some of those judges are not in the minority, so that we have every week through the term the judicial ascertainment by the majority of the Supreme Court of the United States of the judicial fallibility of every one of its own members. There is nothing surprising in that.

Mr. POMERENE. Mr. President—

The VICE PRESIDENT. Does the Senator from Oklahoma yield to the Senator from Ohio?

Mr. OWEN. I yield.

Mr. POMERENE. Is not that also true in the work of the Congress, where there is a majority and a minority?

Mr. OWEN. It is magnificently demonstrated all the time by the Congress. I am merely calling attention to the fact that they are human beings in either case, whether in the Senate or in the House or on the bench, and when they go from the Senate to the bench or from the House to the bench, as they do all the time, they do not cease to exemplify that principle. I am only talking about a supposed infallibility of the court. I am only demonstrating that they are not infallible and ought not to be held up as infallible.

Just look at the income-tax case, and look at the dogma of the Supreme Court on the question of deciding an act unconstitutional only when the unconstitutionality is overwhelmingly established, and only when there is no doubt about the unconstitutionality of the act.

That is the dogma. The Senator from Ohio as a lawyer knows that is a dogma of the Supreme Court, and yet the professional dogma of the court is to give all benefits of the doubt in favor of the constitutionality. The trouble about the dogma is they never pay any vital attention to it. It is only a theological dogma; it is not real. Here is the Income Tax case.

For a hundred years the Supreme Court had sustained the right of Congress to pass an income-tax law. Here was the income-tax law, passed by the House of Representatives, who said it was constitutional; passed by the Senate, and the Senate said it was constitutional; approved by the Attorney General of the United States and by the President of the United States, and they said it was constitutional; and then Judge Blank reversed himself overnight and joined the other four, which made them five, and then they decided in spite of this dogma that there was no doubt whatever about its unconstitutionality.

That was rather a remarkable instance where Judge Blank, whose name I do not care to put in the Record, when he first voted that it was constitutional, judicially ascertained the fallibility of the other four minority members of the court and then, when he changed his mind and joined the four minority members and made them five, he judicially ascertained the fallibility of the four he had just left, and, since he was on both sides, he must have been fallible, and so there was a demonstration and judicial ascertainment of the fallibility of every judge on the court by the acts of Judge Blank.

So that men must not say the Supreme Court is infallible. Notwithstanding that, it is the most honorable court in the world. Notwithstanding that, the court is composed of a membership of men of the greatest learning, the highest character, for whom I have reverence. But I respect the Constitution itself, and I respect the rights of the people of the United States, and the time is coming when the representatives of the people of the United States should not submit to having the power vested in them by the Constitution taken out of their hands, and I will not yield to it so far as I am concerned.

Senators will all remember the famous case of Tilden-Hayes. Here were five of the justices of the Supreme Court; five of the most conspicuous and able Senators of the United States; here were five of the ablest Members of the House of Representatives—seven Democrats, eight Republicans. There were four great contested-election questions with many controverted questions, and every one of the 15 decided every case according to his own previous political predilection, and the country was astonished to find that 8 was a majority of 15. But they did discover it.

That shows what men will do when they are influenced by their environment and by their predilections. The point I want to make is that human beings of the first magnitude are influenced by their training, by their environment, by their social atmosphere, and sometimes by the men with whom they dine.

Now, if you put the sovereign power of declaring void the acts of your legislative representatives in the United States Supreme Court not responsible to you, you may thank yourselves for the result.

The people of the United States have a right to demand of their representatives a protection of the rights of the people against the nullification of the acts of Congress. The people of the United States have a right to know what a law means after it has been passed. After Congress has enacted a statute of many pages the people have difficulty in understanding it as passed. There come out of Congress great volumes of legislation submitted to the people of the country who must understand it, and the people are told that not a single page of any one of these statutes has any element of finality in it. In the case of the Sherman antitrust law the courts waited 25 years before they discovered that Congress meant a "reasonable" restraint of trade.

STANDARD OIL AND AMERICAN TOBACCO CASES.

Look at that great case known as the Standard Oil case. Here was a case where the people of this country after years of struggling finally had their representatives in Congress, in the Senate and in the House, both agree upon the Sherman antitrust law—that was in 1890, 33 years ago—making it a criminal offense to commit an act in restraint of trade, vital if the principle of competition is to survive; vital if the monopolies are not to be permitted to kill off every competitor and have a masterful control over the market and over the price which shall be paid for that which the people produce and for that which the people are compelled to buy; vital if the cost of living is ever to be lowered to a reasonable point. It took the people years to get that law on the statute books. They struggled for that statute for 20 years before they got it. Finally they got it in 1890—33 years ago. Now it is void, practically worthless, because nobody knows what a "reasonable" restraint of trade is.

After taking years to get that law on the statute book, it finally, by the slow, dragging, wearisome process of the court, came before the Supreme Court in the trans-Missouri and joint-traffic cases, and there in three different decisions that court

declared that Congress meant what it said and that it was the law, and any act in restraint of trade was criminal.

Then the trusts came to Congress and tried to get a remedy. I want Senators to listen to the report of the Committee on the Judiciary on this very remarkable case. The proposed relief bill was introduced by Senator Warner, of Missouri, January 26, 1908. Here is the report of the Senate committee refusing to write the word "reasonable" into this act. Congress had said it is not reasonable to deny liberty to another man, no matter how small; it is not reasonable for men to meet and act in restraint of trade, restraining some other man from his rights. Listen to what the Senate committee said:

The antitrust act makes it a criminal offense to violate the law and provides a punishment applied by fine and imprisonment. To inject into the act the question of whether an agreement or combination is reasonable or unreasonable would render the act, as a criminal or penal statute, indefinite and uncertain, and hence to that extent utterly nugatory and void, and would practically amount to a repeal of that part of the act. * * * And while the same technical objections do not apply to civil prosecutions, the injection of the rule of reasonableness or unreasonableness would lead to the greatest variability and uncertainty in the enforcement of the law. The defense of reasonable restraint would be made in every case, and there would be as many different rules of reasonableness as cases, courts, and juries. * * * To amend the antitrust act as suggested by this bill would be to entirely emasculate it, and for all practical purposes render it nugatory as a remedial statute.

President Taft in a special message to Congress January 7, 1910, condemned the proposal of so amending the law, and said that such an amendment would—

put into the hands of the court a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to good government. It is to thrust upon the court a burden that they have no precedents to enable them to carry and to give them a power approaching the arbitrary, the abuse of which might involve our whole judicial system in disaster.

The Supreme Court, in the Standard Oil cases and American Tobacco case (1911), thereupon proceeded to emasculate it and render it nugatory by writing an opinion which in effect held that a reasonable restraint of trade was not unlawful after Congress had deliberately and expressly refused to so amend it.

I am going to read just one opinion from Judge Harlan on this case. Justice Harlan was an honored member of that court for 25 years or more—one of its leading lights. Listen to what he says:

* * * By every conceivable form of expression the majority of the trans-Missouri and Joint Traffic cases adjudged that the act of Congress did not allow restraint of interstate trade to any extent or in any form, and three times it expressly rejected the theory, which had been persistently advanced, that the act should be construed as if it had in it the word "unreasonable" or "undue," but now the court, in accordance with what it denominates "the rule of reason," in effect inserts in the act the word "undue," which means the same as "unreasonable," and thereby makes Congress say what it did not say—what, as I think, it plainly did not intend to say, and what, since the passage of the act, it has explicitly refused to say. It has steadily refused to amend the act so as to tolerate a restraint of interstate commerce, even where such restraint could be said to be "reasonable" or "due." In short, the court, by judicial legislation, in effect, amends an act of Congress relating to a subject over which that department of the Government has exclusive cognizance.

I beg to say that, in my judgment, the majority in the former cases were guided by the "rule of reason," for, it may be assumed, they knew quite as well as others what the rule of reason required when the court seeks to ascertain the will of Congress as expressed in a statute. It is obvious, from the opinions in the former cases, that the majority did not grope about in darkness, but in discharging the solemn duty put on them they stood out in the full glare of the "light of reason" and felt and said time and again that the court could not, consistently with the Constitution, and would not, usurp the functions of Congress by indulging in judicial legislation. They said in express words in the former cases, in response to the earnest contentions of counsel, that to insert by construction the word "unreasonable" or "undue" in the act of Congress would be judicial legislation. Let me say also that as we all agree that the combination in question was illegal under any construction of the antitrust act, there was not the slightest necessity to enter upon an extended argument to show that the act of Congress was to be read as if it contained the word "unreasonable" or "undue." All that is said in the court's opinion in support of that view is, I say with respect, obiter dicta, pure and simple.

In respect to the decision on the income tax, Mr. Justice White, afterwards Chief Justice, in dissenting, said:

I consider that the result of the opinion of the court just announced is to overthrow a long and consistent line of decisions and to deny to the legislative department of the Government the possession of a power conceded to it by the universal consensus for 100 years, and which has been recognized by repeated adjudications of this court. (157 U. S. 429.)

Mr. Justice Jackson, of the Supreme Court, in his dissenting opinion on the income tax decision, said:

Considered in all its bearings, this decision is, in my judgment, the most disastrous blow ever struck at the constitutional power of Congress. (158 U. S. 705.)

Mr. Justice Brown, in his dissenting opinion, said:

I can not escape the conviction that the decision of the court in this great case is fraught with immeasurable danger to the future of the country and that it approaches the proportions of a national calamity. * * * I hope it may not prove the first step toward the despotism of wealth. (158 U. S. 695.)

Mr. President, I do not concur in the attitude of Justice Brown in regarding it as a national calamity, or of Justice Jackson, who said it was the most disastrous blow ever struck at the constitutional power of Congress, because Congress has all the power it needs. It requires no change of the Constitution. It needs but to instruct the judges as to the extent of their power, and the remedy is abundant. Congress need but say that it shall not lie within the power of any judge on the bench to question the constitutionality of an act of Congress, and that it shall not lie within the power of any judge upon the bench to change the policy of an act by reading into the act anything which Congress has not written into it.

The judges on the bench have no desire to deal with arrogance or with usurpation with the powers of Congress. This practice has grown up through many, many years, but the time has come to correct it. I am calling the attention of the Senate and of the country to it, and I am determined that while I remain in this body no such provision as that found on the seventy-second page of this bill, in section 711, shall ever be passed again without my protest.

Mr. POINDEXTER. Mr. President—

The VICE PRESIDENT. Does the Senator from Oklahoma yield to the Senator from Washington?

Mr. OWEN. I do.

Mr. POINDEXTER. I understand that the section of the bill which the Senator from Oklahoma is opposing is a section that provides that in case any portion of the bill, if it shall become an act, shall be held unconstitutional by the courts, that shall not affect the constitutionality of the remainder of it. It is put in there as a precautionary provision by the framers of the bill and by Congress, if Congress shall approve it, to protect an act of Congress from being held to be invalid by the Supreme Court or any other court of the United States, in so far as Congress has that power. I understand that the Senator from Oklahoma is taking a position, which is quite unusual nowadays, that Congress has power by appropriate legislation to deprive the courts of jurisdiction to hold an act, or any part of an act, unconstitutional.

Mr. OWEN. The Senator is quite right.

Mr. POINDEXTER. I fail to see the consistency of the Senator's opposition to this section, which is intended to accomplish the very purpose which the Senator from Oklahoma is advocating, in so far as it can do so.

Mr. OWEN. No; Mr. President, it is very far from accomplishing the purpose which the Senator from Oklahoma has in view. It is, in effect, a concession on the part of Congress that the court has the right to declare unconstitutional an act of Congress, and that I do not assent to. On the contrary, there should be put into this bill a provision that the court shall not have any right to appellate powers over the question of the constitutionality of this or any other act.

Mr. POINDEXTER. I understand, then, from the Senator's position, that he, by his opposition to this section, is of the opinion that if any part of this act should be held to be unconstitutional, the whole act should fall as unconstitutional.

Mr. OWEN. No, sir.

Mr. POINDEXTER. The provision which the Senator is moving to strike out is intended to prevent that very result.

Mr. OWEN. No, sir; the Senator fails to perceive that I object to the Congress consenting to have any part of the act being declared unconstitutional. I am not willing to have the court declare any part of the act unconstitutional.

Mr. POINDEXTER. But the Senator does not accomplish that purpose by striking out this provision of the act.

Mr. OWEN. I will accomplish that purpose, if the Senator pleases, by an amendment that I will offer in lieu of it.

Mr. POINDEXTER. That would be quite a different proposition; but the Senator has not offered anything in lieu of it, and, as I understand, he is opposing this provision.

Mr. OWEN. Yes; the Senator is quite right. I am opposing that provision, and at the proper time I will offer the amendment, which I have justified by the matter that I have submitted to the Senate to-day. Unfortunately, few Members of the Senate hear what is being said. Few Members pay any attention whatever to the quotations which are put in here from the Supreme Court itself. Both sides have vacated the Senate Chamber. They do not hear it. The argument may be vital to the Nation, but nobody pays any attention to it. Our rules of unlimited debate have killed debate and driven Senators from the floor.

Mr. POINDEXTER. That shows a weakness on the part of Congress—on the part of one branch of Congress, at least.

Mr. OWEN. No; I think it is really due to a weakness in our own rules. We have adopted the rule of unlimited debate here, and it has killed real debate.

Mr. POINDEXTER. The Senate makes its own rules, and in so far as the rules are defective the Senate is responsible for

them. The Senator from Oklahoma now castigates the Senate—

Mr. OWEN. No; I am not castigating the Senate.

Mr. POINDEXTER. Well, he criticizes it—

Mr. OWEN. No; I am not even criticizing it. I am merely commenting upon an obvious fact.

Mr. POINDEXTER. He comments upon an obvious fact unfavorably to the Senate.

Mr. OWEN. That depends on the point of view. I wish the majority of the Senate thought so.

Mr. POINDEXTER. And yet the entire burden and purport of the argument of the Senator is to give to these branches of Congress that he says pay no attention to the vital needs of the Nation absolute and autocratic power over the people of the country, without any constitutional limitations whatever.

Mr. OWEN. The Senator from Washington would like to have the Supreme Court exercise this power over Congress; and if the Senator will take the trouble to read in the Record what I have said, he will find that there is an abundant justification for what I have said. The Senator, however, comes in at the last moment and hears only a few words of what I say and makes an observation which occurs to him, and which is perfectly natural and reasonable, and with which I find no fault. I am not criticizing the Senate particularly. I am merely calling attention to what is an obvious fact. I have tried time and time again, in the most earnest and serious way, to get direct cloture in this body. I would vote for it to-day, notwithstanding my objection to this bill.

Mr. POINDEXTER. Mr. President, if the Senate is subject to the comments that the Senator from Oklahoma makes we may presume that the other branch of the Congress is subject to the same characterization, that it makes rules under which it is more or less incapacitated from doing business efficiently. How does the Senator base upon that proposition the doctrine which he now announces, that it should have supreme power, unaffected by any constitutional limitations?

Mr. OWEN. I do not want to repeat the speech I have just made. I have been speaking for an hour or more, and laying the ground to justify what I have said, and I must ask the Senator to be good enough to read it, because I do not want to repeat it. The House of Representatives has cloture, the Senate has not, and my observations are quite justified.

Mr. BROOKHART. Mr. President, I should like to ask the Senator from Washington if there is any other court in the world that has power to set aside legislative statutes except the Supreme Court of the United States?

Mr. POINDEXTER. All the courts of Great Britain have such power and constantly exercise it.

Mr. OWEN. Oh, no. They do not.

Mr. POINDEXTER. The Senator is entirely mistaken about that. It may be an unusual exercise of power, but there is a constitution in Great Britain, although it has not the advantage that I believe results from having a constitution in writing. They have, however, an unwritten constitution.

Mr. OWEN. Yes; and the courts do not set aside acts of Parliament, either.

Mr. POINDEXTER. If the Senator is familiar with the judicial history of Great Britain, he will find many occasions upon which acts of Parliament of Great Britain have been held to be unconstitutional and in violation of the rights of the people and of the British constitution.

Mr. BROOKHART. Recently the procedure was amended so that the power of the House of Lords, even, was taken away and subordinated to that of the lower House of Parliament.

Mr. KELLOGG. Mr. President, will the Senator yield?

Mr. OWEN. Yes; I yield.

Mr. KELLOGG. I should like to say to the Senator from Iowa that I have heard the House of Lords within the last 10 years pronounce opinions declaring laws of the Provinces of Canada in violation of the British North American act, which is the written constitution of Canada.

Mr. BROOKHART. Mr. President, that does not reach the point I raised.

Mr. OWEN. That does not reach the point at all.

Mr. BROOKHART. The legislation of the Dominion, of course, is subject to the House of Lords and to the English courts. I was speaking of the acts of Parliament itself.

Mr. POINDEXTER. They have done it as to the laws of Parliament, too.

Mr. OWEN. I challenge the Senator to put the cases in the Record.

Mr. POINDEXTER. I shall be very glad to accommodate the Senator from Oklahoma.

Mr. OWEN. I will ask the Senator to put them in the Record. He will find difficulty in finding them.

Mr. President, Mr. Justice Harlan said, in regard to this income-tax decision:

It so interprets constitutional provisions * * * as to give privileges and immunities never contemplated by the founders of the Government. * * * The serious aspect of the present decision is that by a new interpretation of the Constitution it so ties the hands of the legislative branch of the Government that without an amendment of that instrument or unless this court at some future time should return to the old theory of the Constitution, Congress can not subject to taxation, however great the needs or pressing the necessities of the Government, either the invested personal property of the country, bonds, stocks, and investments of all kinds, etc. * * * I can not assent to an interpretation of the Constitution that impairs and cripples the just powers of the National Government in the essential matter of taxation and at the same time discriminates against the greater part of the people of our country. (158 U. S. 695.)

Mr. Justice Harlan said on another occasion:

When the American people come to the conclusion that the judiciary of this land is usurping to itself the functions of the legislative department of the Government, and by judicial construction is declaring what is the public policy of the United States, we will find trouble. Ninety millions of people—all sorts of people with all sorts of beliefs—are not going to submit to the usurpation by the judiciary of the functions of other departments of the Government and the power on its part to declare what is the public policy of the United States. (221 U. S. 1, 106.)

That is the language of a justice of the Supreme Court I am quoting. Senators should listen to it and remember the rights of the people.

Mr. Theodore Roosevelt, before the Colorado Legislature, pointed out the grave danger in recent court decisions in defeating humane laws, and stated:

If such decisions as these two indicated the court's permanent attitude there would be really grave cause for alarm, for such decisions, if consistently followed up, would upset the whole system of popular government.

And he referred to such decisions as "flagrant and direct contradictions to the spirit and needs of the times."

Senator ROBERT M. LA FOLLETTE, in his introduction to Gilbert E. Roe's work, "Our Judicial Oligarchy," said:

Precedent and procedure have combined to make one law for the rich and another for the poor. The regard of the courts for fossilized precedent, their absorption in technicalities, their detachment from the vital, living facts of the present day, their constant thinking on the side of the rich and powerful and privileged classes have brought our courts into conflict with the democratic spirit and purposes of this generation. Moreover, by usurping the power to declare laws unconstitutional, and by presuming to read their own views into statutes without regard to the plain intention of the legislature, they have become in reality the supreme lawmaking and lawgiving institution of our Government. They have taken to themselves a power it was never intended they should exercise; a power greater than that intrusted to the courts of any other enlightened nation. And because this tremendous power has been so generally exercised on the side of the wealthy and powerful few, the courts have become, at last, the strongest bulwark of special privilege. They have come to constitute what may indeed be termed a "judicial oligarchy."

Thomas Jefferson, in his letter to Mr. Jarvis, in 1820, rebuked him for assuming that judges should have power over the legislature, the judges being themselves beyond control except by the impossible remedy of impeachment, and said:

You seem to consider * * * the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine, indeed, and one that would place us under the despotism of an oligarchy.

A number of books have recently been written upon this matter, as *Our Judicial Oligarchy*, by Gilbert E. Roe; *The Judicial Veto*, by Davis; *The Majority Rule and the Judiciary*, by William N. Ransom, with an introduction by Theodore Roosevelt; *The Spirit of the American Constitution*, by Prof. J. Allen Smith; all of which emphasize the need to correct the practice I have referred to.

When the Standard Oil Co. was dissolved their stock was worth about \$600,000,000. Six years afterwards it was worth twenty-four hundred million. At the present time I do not know what it is worth, but very, very much more than that.

Our yielding to this sort of thing will account for the growth of monopolies in this country, for the manner in which prices for the necessities of life have gone to a point which is distressing the people of this Nation from one end to the other, which is ruining the farmers and stock raisers, the little producers, and the small consumers.

Mr. LENROOT. Mr. President, before the Senator leaves that subject, will he yield?

Mr. OWEN. I yield.

Mr. LENROOT. I would like to get the Senator's viewpoint. Suppose Congress should pass a law respecting an establishment of religion. Does the Senator think that should be the law of the land?

Mr. OWEN. I will suppose nothing of the kind.

Mr. LENROOT. But I say, if Congress did.

Mr. OWEN. I refuse to agree that it might. No such presumption is possible.

Mr. LENROOT. Of course, I see the predicament the Senator would be in—

Mr. OWEN. I see the Senator's predicament when he makes an impossible suggestion.

Mr. KELLOGG. Will the Senator yield to me?

Mr. OWEN. I yield to the Senator.

Mr. KELLOGG. Suppose the Congress should pass a law providing for the seizure of papers, an unreasonable search and seizure, in violation of the Constitution, on which papers a man could be convicted of a crime, would the Senator say then—

Mr. OWEN. The supposition of the Senator is well-nigh impossible, and if made can be corrected by Congress.

Mr. KELLOGG. I will say to the Senator that Congress did pass such a law, and in the Baird case the Supreme Court held it to be unconstitutional.

Mr. OWEN. If Congress does make a mistake, when it is brought to the attention of Congress properly it will always be corrected.

Mr. KELLOGG. I can show the Senator dozens of acts in which Congress has sought to take away the rights of citizens guaranteed to them under the Bill of Rights, which took centuries to establish, which the courts have declared unconstitutional.

Mr. OWEN. The Senator can find, if he will take the trouble, unnumbered cases—they are of daily occurrence in this body—where the Congress of the United States is giving relief to one citizen after another whenever he comes here and shows he has a case.

Mr. SHIELDS. Mr. President—

Mr. OWEN. I yield to the Senator.

Mr. SHIELDS. In line with the suggestions made by the Senators who have just taken their seats, when Congress passed a law invading the reserved powers of the States, and providing for an equality of the races, in fact, putting the negroes, who were formerly slaves, over their former masters throughout 11 States in the Union, did not the Supreme Court do right in holding it unconstitutional and void, and did it not have the power to do it?

Mr. OWEN. Yes; I think it did right, and I think Congress did wrong at the end of the war in passing such an act, I will answer the Senator. He need not think he has made a conclusive argument by his question.

Mr. SHIELDS. I expected the Senator to give an answer.

Mr. OWEN. I will answer the question. It is true that at the end of the Civil War, when men's passions had risen to a point where reason became blind, such legislation was passed. It was an error on the part of Congress.

Mr. SHIELDS. Then, if it had not been for the power of the Supreme Court, what would have happened?

Mr. OWEN. Wait until I finish. It was a mistake by Congress; but I will say to the Senator, and also to the Senator from Minnesota, and to others who have raised this point, that while Congress may make a mistake, if Congress makes a mistake, the people of this country can correct it at the ballot box; but they can not correct a mistake made by the Supreme Court appointed for life, upon which there is no review. I will say more to the Senator, that while Congress may make a mistake, the probability of 500 men, on their oaths of office, making a mistake is less likely than a smaller number making a mistake, and as between the two I prefer to have the power exercised by the representatives chosen by the people of this country at the ballot box, responsible to the people, and not put that power in the hands of those who are not responsible to the people.

Mr. SHIELDS. Then, Mr. President, while Congress is thinking over its mistake, and repealing it, in the meantime the man would be hung.

Mr. OWEN. That remark is more witty than wise.

Mr. President, I have finished what I had to say, and it goes into the RECORD. If those Senators who are not here are interested in it, they will find the quotations from the Supreme Court of the United States itself justifying what I have said. It is for them to determine upon the wisdom of the policy which I have suggested.

REPORTS OF DISTRICT PUBLIC UTILITY COMPANIES (S. DOC. NO. 303).

Mr. BALL. I ask unanimous consent to have printed as a public document the reports for the year ending December 31, 1922, of all public utility companies in the District of Columbia.

The PRESIDING OFFICER (Mr. POINDEXTER in the chair). Is there any objection? The Chair hears none, and it is so ordered.

REORGANIZATION OF EXECUTIVE DEPARTMENTS.

Mr. SMOOT. Mr. President, I ask unanimous consent to report back favorably without amendment from the Committee on Appropriations the joint resolution (S. J. Res. 282) to amend the resolution of December 29, 1920, entitled "Joint resolution

to create a joint committee on reorganization of the administrative branch of the Government." I will simply say to the Senate that it provides for the extension of time until July 1, 1924. The Senator from Mississippi [Mr. HARRISON] is a member of the commission, and I think he will join me in asking unanimous consent for its immediate consideration.

Mr. HARRISON. I think the joint resolution should be passed. The time has expired, and only yesterday, I believe it was, was the preliminary report which had been prepared by Mr. Brown, at the instance of the executive department, submitted to the joint commission. The joint commission has not had time to consider any of the problems involved. It is quite an ambitious scheme, and it would seem to me that the time should be extended and that there should be no opposition at all to the extension.

Mr. JONES of Washington. With the understanding that it will involve no discussion, I have no objection.

Mr. OWEN. I would like to ask whether or not the report has been printed as a document? I noticed it in the CONGRESSIONAL RECORD, but in such fine print it was difficult to read.

Mr. SMOOT. We are going to have a larger print of it.

Mr. OWEN. Will it be printed in larger type?

Mr. SMOOT. It will be.

Mr. OWEN. I think it ought to be printed so as to be easily legible.

Mr. SMOOT. I will say to the Senator that we have that in mind, and it will be done. It will be printed on sheets about the size of those I presented to the Senate on yesterday, so that any person even without glasses will be able to read it.

Mr. OWEN. Will there be some memorandum explaining the reasons for the adjustments which have been suggested?

Mr. SMOOT. Not until the joint commission meets to discuss the matter. Then we shall make a report upon it.

Mr. OWEN. I read it with great interest in the RECORD, but, as I said, it was in such small type it was difficult to read.

There being no objection, the joint resolution was considered as in Committee of the Whole, and it was read, as follows:

Resolved, etc., That section 3 of the resolution of December 29, 1920, entitled "Joint resolution to create a joint committee on the reorganization of the administrative branch of the Government," is amended by striking out the words "the second Monday in December, 1922," and inserting in lieu thereof "July 1, 1924."

The joint resolution was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

AGRICULTURAL DEPARTMENT APPROPRIATIONS—CONFERENCE REPORT.

Mr. McNARY. Mr. President, I submit a conference report on the Agricultural appropriation bill and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The report will be read.

The Assistant Secretary read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate numbered 33 to the bill (H. R. 13481) "making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1924, and for other purposes," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

Amendment numbered 33: That the Senate recede from its disagreement to the amendment of the House to the amendment of the Senate numbered 33, and agree to the same.

CHAS. L. McNARY,

W. L. JONES,

LEE S. OVERMAN,

E. D. SMITH,

Managers on the part of the Senate.

SYDNEY ANDERSON,

WALTER W. MAGEE,

EDWARD H. WASON,

J. P. BUCHANAN,

GORDON LEE,

Managers on the part of the House.

Mr. HARRISON. I merely wish to inquire, in reference to the conference report, what items it covers?

Mr. McNARY. Mr. President, the amendment covered by the report relates to the construction of roads in national forests. The Senate refused to concur in the amendment of the House to the amendment of the Senate and sent it back to the committee of conference with instructions that the Senate conferees should insist upon the Senate amendment. The bill, as it passed the House of Representatives, carried an item of \$6,500,000 for that purpose, \$3,000,000 only being made immediately available. Upon the motion of the Senator from Arizona

[Mr. CAMERON] the whole amount, namely, \$6,500,000, was made immediately available. The conferees met, but the House conferees refused to yield to the demand of the Senate conferees, and so the Senate conferees finally yielded to the House, there being simply some modification and some improvement of the language of the item. I now ask that the Senate adopt the House provision as to the one particular item.

Mr. HARRISON. Mr. President, I understand, then, there is just one matter that is in disagreement. I see that the junior Senator from Arizona [Mr. CAMERON] is in the Chamber. The senior Senator from Arizona [Mr. ASHURST] is not now present. He has temporarily gone into the cloakroom; but it would seem to me that perhaps he ought to be here before this report is adopted.

Mr. McNARY. If the senior Senator from Arizona desires to be present, upon the request of the Senator from Mississippi I shall withhold the request that action be taken on the report at this time. I will state to the Senator from Mississippi that I shall call up the report again, if I may have an opportunity of securing the floor, when the Senator returns to the Chamber.

The PRESIDING OFFICER. The report will lie over for the present.

Mr. McNARY subsequently said: Mr. President, I call up the conference report on the Agricultural appropriation bill for the fiscal year 1924.

The VICE PRESIDENT. The conference report has been submitted and read. The question is on agreeing to the conference report.

Mr. CAMERON. Mr. President, reserving the right to object, I wish to say that I feel that the agreement between the conferees on the part of the Senate and the House has so modified amendment numbered 33 that while it does not quite meet with my approval and does not give us the \$6,500,000 to which we are justly entitled, yet on account of the lateness in the session I do not feel that I should object to the adoption of the report at this time. I believe that a proviso has been put in by the House which will safeguard our interests and give the Forest Service the necessary leeway whereby they can expend the full amount—\$6,500,000. Therefore I shall not object to the adoption of the report, but I wish to read the proviso so that it will appear in the RECORD at this point:

Provided further, That the Secretary of Agriculture may incur obligations, approve projects, or enter into contracts under his apportionment and prorating of this authorization, and his action in so doing shall be deemed a contractual obligation of the Federal Government for the payment of the cost thereof: Provided further, That the appropriations heretofore, herein, and hereafter made for the purpose of carrying out the provisions of section 8 of the act of July 11, 1916, and of section 23 of the Federal highway act of November 9, 1921, and acts amendatory thereof and supplemental thereto, shall be considered available for the purpose of discharging the obligations created hereunder in any State or Territory: Provided further, That the total expenditures on account of any State or Territory shall at no time exceed its authorized apportionment.

I think that will cover the question and give the Forest Service the necessary authority in order to utilize the appropriation of \$6,500,000.

The VICE PRESIDENT. The question is on agreeing to the conference report.

The report was agreed to.

PROHIBITION ENFORCEMENT AND THE CIVIL SERVICE.

Mr. SHIELDS. Mr. President, there is a bill upon the calendar of the Senate—No. 927, S. 3247—entitled "A bill to transfer to the classified service agents and inspectors in the field service, including prohibition agents and field inspectors appointed and employed pursuant to the national prohibition act, and for other purposes," which I believe concerns legislation of great importance and ought to be enacted into law as soon as possible. The present session will soon be at an end, and this matter should be attended to next Monday when the calendar for bills unobjected to will be called. Under the five-minute rule I will not then have time to present the merits of the bill, and I am availing myself of this opportunity to do so that I may challenge the attention of the Senate to the importance of the immediate consideration and favorable action upon the measure. The public interest and the proper and efficient enforcement of the Federal prohibition laws require that the agents and employees engaged in this service should be placed under the civil service law and subject to its provisions and regulations. These employees were by section 38 of the Volstead law expressly excepted from the civil service law because that was claimed to be a war or emergency act, but with the understanding and expectation, as I am informed, that after the eighteenth amendment to the Constitution, known as the prohibition amendment, should become effective, they would be covered into the classified service as other employees of the Federal Government, but in the supplemental Volstead law

thereafter passed it was not done and they yet remain open to political influences under the demoralizing spoils system.

The propriety, if not necessity, of placing these employees under the civil service law is recognized by the public, and especially by the good men and women throughout the country who favored prohibition as a great moral and economic reform and wish to see the laws for its enforcement executed justly and efficiently and in a manner to obtain and maintain the respect of the people. These men and women favored and worked for prohibition because they believed that it would advance the material interest and promote the prosperity of the people and remove a great cause of distress, suffering, depravity, and crime, without pay or compensation for their time and services. The necessity of placing these employees under the civil service law has been called to my attention by a number of these faithful workers, and I have been asked to urge upon Congress proper legislation for that purpose. Some time since I received a letter upon the subject from the president of the Tennessee Woman's Christian Temperance Union, Mrs. Minnie Alison Welch, of Sparta, Tenn., one of the ablest and most devoted women of my State, which so well states the merits and the public interest for this legislation that I can not do better than read it:

Hon. JOHN K. SHIELDS,
Washington, D. C.

MY DEAR SIR: We notice that Senator STERLING's civil service bill (S. 3247) has been reported favorably to the Senate. We believe that this is the best remedy we can procure for the enforcement of the eighteenth amendment and Volstead law. While it may not eliminate all the bad elements that have gotten in, time will eliminate them, and this bill will afford us a better opportunity for getting more efficient prohibition agents.

We are hoping that you will see fit to use your influence and vote for this bill. The public welfare demands it and white-ribboned women of our State and many other good women are hoping that you will stand for the measure.

Thanking you for your interest in the same for prohibition, I beg to remain,

Cordially yours,

MINNIE ALISON WELCH,
State President.

I wrote Mrs. Welch that I would examine the Sterling bill and if I believed that its provisions would secure better officers and more efficient enforcement of the laws enacted by Congress for the enforcement of the eighteenth amendment, prohibiting the manufacture, importation, and sale of intoxicating beverages, I would support it, as I favored the enforcement of those laws in good faith and efficiently, like all other laws, as I had always been for order and law enforcement.

I conferred with Senator STERLING in regard to his bill and urged him to bring it forward as soon as practicable. I found him deeply interested in the matter and ready to procure action at as early a date as possible. Senator STERLING introduced a bill on April 25, 1921, to place these employees under the civil service law. It was referred to the Committee on Civil Service and Reform. Afterwards, on March 7, 1922, he introduced another bill, which was also referred to the same committee and favorably reported to the Senate December 13, 1922, and is the one now upon the calendar. I will refer to the provisions of these bills later. I understand a bill having the same object was introduced more than a year ago in the House of Representatives, but that so far the committee to which it was referred has made no report upon it. I have no personal knowledge of why this great delay in consideration of these bills has occurred.

I understand that there are 1,800 Federal agents and employees engaged in the prohibition service, a greater number than in any other branch of the service not covered under the civil service law. A few days ago I read in a Washington paper a statement which speaks for itself, and as I know nothing in regard to the matter I will read it:

RAPS DRY APPOINTERS—ANTI-SALOON LEAGUE BLOCKS CIVIL SERVICE FOR AGENTS, CHARGE.

The Anti-Saloon League bought the Volstead Act with congressional patronage, and therefore is opposing application of the civil-service rules to prohibition-enforcement service, W. D. Foulke, National Civic Advice League vice president, charges in a letter he is sending to S. E. Nicholson, Anti-Saloon League secretary.

The Federal prohibition service now is corrupted by officials appointed under the spoils system, he said.

I have seen no denial of this serious charge. I have also been informed that charges of a similar character as those contained in this news item have been made to Members of Congress by Mr. Foulke, but of these I have no personal knowledge.

The large number of these employees and the great delay in placing them under the civil-service regulations compels everyone interested in the subject to believe that there is some improper reason for the delay of this legislation. The Republican Party, now in power, and the Democratic Party are both pledged to the maintenance and enforcement of civil service and the application of the civil service laws to all employees

of the Government, and this delay is in direct violation of those pledges.

Mr. President, there is no class of Federal employees which the public interest demands should be under the classified service than those whose duty it is to enforce the prohibition laws. They come closer to the people, their persons, their effects, and their homes than any other class of employees. They perform duties which bear directly upon a great change in the habits, usages, and customs of the people in their private life resulting from the enactment of the Volstead law and which closely and intimately affect the great and sacred rights of personal liberty, private property, and the sanctity of home. None but the best, most intelligent, and law-abiding men should be intrusted with such duties. Every precaution for the protection of the people from oppression and maltreatment should be taken and go hand in hand with proper measures for the efficient and just enforcement of these laws. We know by common report that when the Volstead law was passed that there was appointed some prohibition officers in perhaps every State who misconstrued their power and duties and enforced the law in an oppressive, rude, and offensive way, without search warrants or evidence that would justify the issuance of a search warrant, searching the persons of men and even of women and of the effects and houses of the people, and assaulting them on the highways in a most outrageous manner. Some of them have been charged with accepting bribes from bootleggers, brutal assault and murder, and some of them indicted for these offenses, but I know nothing of the facts and will not attempt to state them. Generally speaking, these practices have been abandoned and forbidden, but occasionally we still hear of cases of this kind. There is no question but what the conduct of these officers aroused opposition to the enforcement of the law and generated disrespect for it which otherwise would not have existed. Proper examination by the Civil Service Commission of applicants for this service and an ascertainment of their character, their intelligence and prudence, as well as of their efficiency and courage, will be of inestimable benefit, and protection to the people in their dearest rights as well as contribute to the thorough and efficient enforcement of the law.

Mr. President, the bill introduced by Senator STERLING April 28, 1921, which is entitled "A bill providing for the placing of Government employees engaged in the enforcement of national prohibition under the civil service," I think better than the one subsequently introduced by him and now on the calendar. This bill (S. 1376) provides that the agents and employees for the enforcement of Federal prohibition shall be appointed under the civil service law and that within three months from the passage of the act the then incumbents of all those positions shall be subject to the competitive requirements of the law and required to successfully pass open competitive examinations in order to retain their positions. The bill reported to the Senate places the positions of these agents and employees under the civil service law and bodily covers all the present incumbents into the civil service without examinations of any kind; and under it the present employees and agents, whether good or bad, or efficient, will remain in office for years, certainly until there is another administration in power. The provisions of this bill, I must say, gives color to the charge that the delay in placing the prohibition employees in the classified service is due to political machinations; and bodily transferring of those now in office is clearly intended to protect political appointees, without regard to good and efficient service and the rights of the public. When we reach this bill upon the calendar I shall offer the one first introduced by Senator STERLING as a substitute and urge its passage, because it will provide for better service both in the interest of the people and the Government.

Mr. President, I ask, without reading, that the two bills referred to be printed in the RECORD as an appendix to my remarks.

THE PRESIDING OFFICER (Mr. LENBOOT in the chair). Without objection, it is so ordered.

Mr. SHIELDS. Mr. President, that the Federal Government is meeting with considerable difficulty in enforcing the laws enacted by Congress for the execution of the prohibition amendment can not be denied. The President of the United States recently called together the governors of the States and asked their aid and cooperation in suppressing the manufacture and sale of intoxicating liquors for beverage purposes. When the Chief Executive hangs out a signal of distress of this kind we must know the situation is real and serious. The Congress has made a special appropriation of the enormous sum of \$9,000,000 to defray the expenses of this special law, in addition to the general appropriation for the Department of Justice having

charge of enforcing the criminal laws of the Federal Government. I know of no other law which has called for such special treatment and the expenditure of so great a sum of money in its enforcement. The press of the country teems with accounts of bootleggers and the activities of the officers of the law in pursuing and arresting them, and in some States the dockets of the United States district courts are congested with prosecutions against them. These facts can not be denied and they must be dealt with practically and honestly. The cause or causes creating these conditions must be ascertained and examined and removed, which I think can be done. While it may take some time, yet I have confidence in the supremacy of the Government, the ability and integrity of the courts, and the efficiency of law officers. If we find that a law made to enforce the Constitution of our country is not effective, it should be amended, but we should never run up the white flag or surrender to lawlessness. Every provision of our Constitution must and shall be enforced reasonably and justly and consistent with every other provision of that great instrument.

I wish to discuss briefly some of the causes which, I think, have brought about and encouraged this lawlessness and the disrespect which it must be conceded exists for the Federal laws for the enforcement of the eighteenth amendment and many of the officers and employees engaged in that service.

Mr. President, the eighteenth amendment to our Constitution, ratified by the States January 28, 1919, ordained that after one year from the ratification of that article the manufacture, importation, transportation, or sale of intoxicating liquors within the United States and all territories subject to the jurisdiction thereof, for beverage purposes, be prohibited.

The amendment confers the only power Congress has to legislate upon this subject and was and is confined to the time and purposes in the amendment specially stated and set forth. It is not, like many other constitutional provisions, self-executing, and it was the duty of the Congress to pass laws for the proper enforcement of it.

When the amendment was proposed it seemed to meet with the approbation of a majority of the people of the United States, and it was promptly ratified by the States. Public sentiment favored it. It was the result of long and patient labor and education of the churches of all denominations and such philanthropic and beneficent organizations as the Anti-Saloon League, the Young Men's Christian Association, the Women's Christian Temperance Union and others, and of the Federal and State Governments, the great railway and other corporations employing thousands of men and women and the manufacturers and other business men, demanding for the protection of the public and their own interest that their employees be sober and free from the vice of drunkenness. All these influences, religious, moral, and business, combined in demanding sobriety, temperance, industry, and efficiency, and their united efforts were irresistible and resulted in the eighteenth amendment.

I do not controvert the fact that there was a respectable minority of the people opposed to the amendment and that there are some who are still opposed to it and would have it abrogated, but abrogation is a vain hope and their efforts will not succeed. The amendment is in the Constitution, a part of our supreme law, supported by the expressed will of a majority of the people of the United States, and it is there to remain permanently. I voted for the amendment, and I can conceive of no conditions under which I would vote for its abrogation.

The trouble the Federal Government has in enforcing prohibition, in my opinion, is not opposition of the people to the amendment, but to the laws enacted by Congress for its enforcement, known as the Volstead law—original and supplemental—and the influences and circumstances under which they were enacted and which attend their execution.

Although the amendment, which for the first time conferred upon Congress the power of controlling the manufacture and sale of intoxicating liquors for beverage purposes, provided on its face that it should not be effective for one year from its ratification by the States, within that year overzealous persons, not willing to abide by the provisions of the constitutional amendment they had aided to make a part of the fundamental law of the land, before the expiration of that year pressed through Congress the original Volstead law, precipitating prohibition suddenly and prematurely upon the country. The time when the amendment should take effect was deferred to allow the people to prepare themselves to conform to the great change made in their habits, and to permit those who had been theretofore engaged in the manufacture and sale of intoxicating liquors for beverage purposes legitimately and under the protection of Federal laws to arrange their business so that as little loss as possible might fall upon them and those to whom they were indebted, a practice that had been pursued in the prohibition laws

in practically all the States and which was deemed reasonable and just.

This provision was disregarded, a law was passed before the expiration of the year allowed, and before the amendment became effective, under the pretense that it was a war measure and came within the extraordinary war powers of Congress, although the armistice had been signed nearly a year before and our Army, with the exception of a few thousand men, had been demobilized and peace reigned throughout the land. What troops we did have were in cantonments, protected from the use of intoxicating liquors by the State laws and an act of Congress prohibiting the sale of such liquors within 10 miles of any cantonment, shipyard, or other Government agency. The people realized that the law was passed upon a fraudulent pretense, discrediting the great moral cause it proposed to aid, and resented the action of Congress. These were my views, and I voted against that law for these reasons and as well as on account of some of its drastic and confusing provisions, in part not authorized by the prohibition amendment. President Wilson vetoed it, and I again voted to sustain his veto, but the Congress passed it over the President's objections.

After the constitutional amendment became effective what is known as the Volstead supplemental law was enacted. I voted against this also, because what was known as the Stanley amendment, to protect the persons, their effects, papers, and houses, as provided by the fourth amendment of the Constitution, against unreasonable searches, was not allowed as offered and the modified form in which it was passed is insufficient to give such protection. I regret the notes of my speech in the Senate in favor of that amendment were mislaid and the speech failed to reach the RECORD.

The original Volstead Act covers some 20 pages of closely printed matter and the regulations made for its enforcement by the Federal prohibition commissioner, and having the effect of law, some 53 pages; the supplemental law, I think, covers about 4 pages; thus what is known as the Volstead law is a voluminous document containing some 80 printed pages of innumerable provisions and exceptions, so involved and confusing that the courts and the lawyers have difficulty in interpreting its meaning and making it impossible of understanding by the people upon whom it is intended to operate.

Mr. President, it was human nature for the people of this country, many of whom had always favored prohibition laws, and even teetotalers, to revolt against such sudden and drastic legislation, interfering with things that they had previously exercised the right to determine for themselves, and their habits, appetites, usages, and customs. The enforcement of the amendment was not handled diplomatically and judiciously and in such manner as to commend it to the people, afford it the cordial reception that a reform measure should have, and to win and retain public respect.

Mr. President, it is impossible arbitrarily to legislate morality or religion into men and women, especially those of a free and independent people like Americans. You can not change the habits, the passions, of men overnight by man-made law. It has been tried in all ages, and while in some instances outward conformance has been achieved, yet inwardly there was no change in those sought to be controlled. God alone can effect such changes in man. It must be done by patient labor, education, example, and appeals to the higher and nobler impulses of men and women, their love of humanity and justice, their patriotism, and, finally, by their love and fear of their God. Bishop Woodstock, in a splendid address delivered some weeks ago, spoke upon this subject as follows:

The consciousness of the need of God carries with it the craving for moral and spiritual freedom; for the world is becoming weary of reform and irritated by regulation, while it longs for choice, self-expression, and self-determination. We can not regulate a world spiritually nor reform it morally by law and compulsion. What the world now most sorely needs is not reformers but spiritual leaders, not regulation but moral and spiritual redemption. This redemption never has been promoted on a political basis only. It must be supported on a higher basis to give it motive and inspiration. Men may restrict the liberty of others by regulation and reform, but it always falls short. Unrestricted regulation and reform may go so far as to say that the State makes the conscience, and therefore the State can do no wrong. It took a harrowing war to explode this political heresy. We hold that God gave and guides the conscience, and that the conscience makes the nation. The one would make the sword the defense of civilization; the other would make the cross its redemption and the conscience its guide. The first is the "last struggle of a belated feudalism," the second is the conscious need of God in the glorious liberty of the sons of God.

I also have an editorial from the Journal and Tribune, a daily paper published in my State, written by its able and venerable editor, who has for 50 years fought the cause of prohibition in Tennessee and aided much to crown that struggle with splendid success both in the law enacted by the general assembly of the State and its enforcement by the constituted authorities entrusted with its administration, suggested by a

statement in the inaugural address of Gov. Austin Peay, the present distinguished executive of my State, which I will read:

THE PURPOSE OF MAN-MADE LAWS.

In his inaugural address delivered Tuesday, Governor Peay, addressing the membership of the State general assembly, gave utterance to these sentences:

"I beg its membership to studiously refrain from the consideration of moral, social, temperance, or other legislation of distracting character until the ways and means have been found and effected to restore sound and orderly government in this State. The statute books are now filled with laws on those subjects which are not being enforced, and merely to impose penalties in acts which juries will not impose in practice is to waste time and lower the lawmaking authority in public estimation."

Whether or not the lack of law enforcement is due to the lack of will or efficiency of the courts and those who serve on juries, it is not our purpose here and now in this connection to stop and inquire; that is left to the intelligent reader to settle for himself or for herself.

But there is one thing that has been said in these columns time and again, and is here repeated. It is an impossibility to make a bad man good by statute; the man-made law may make one appear good on the outside, while in fact he is a fair imitation of the "whited sepulcher."

It never was intended that in the matter of individual morality the State should take the place of the church. If the church stands in need of any protection in the performance of its duties, that it must have, it is provided for in a statute that makes it a misdemeanor for anyone to disturb public worship. We fail in recalling a single case in which that statute has been violated the offender escaping the penalties fixed.

Looking at the situation from that viewpoint, Governor Peay is not open to adverse criticism in asking the legislature to refrain from the making of new laws, making people righteous by statute, and turning its attention to the making of fewer offices, taxing the people for the payment of salaries that are of benefit only to those who are the occupants of offices created for their special benefit and as rewards for political services rendered, to be continued in the next political campaign.

The principles, so well stated in these utterances, fully support the views I have advanced about man-made laws, concerning moral conduct and religious beliefs of men, and, to my mind, are incontrovertible. They illustrate and account for the troubles the Federal Government is now having in enforcing the Volstead law. The discontent and resentment from these causes will disappear with the lapse of time and are already much abated.

Mr. President, it was unfortunate, in view of the manner in which the Volstead law was precipitated upon the country with such unseemly haste, that the agents and employees appointed to execute it were excepted from the civil service, and their offices became the prey of political patronage. It was unfortunate that too many of these appointees could not grasp the delicate duties intrusted to them and proceeded to enforce the law in many cases rudely, oppressively, and unlawfully, thus increasing the discontent and resentment of the people. How much better it would have been had these employees been subjected to a civil-service examination and none but proper men appointed. There would have been less antagonism to the law and a more efficient execution of it. This can all now be remedied by placing these agents and employees under the civil service law.

Mr. President, another cause of the difficulty in the successful enforcement of the Volstead law is the resentment of the people growing out of the arrogant and insolent assumption of certain parties, and especially some here in Washington, implied from utterances and actions, that they placed in the Constitution the eighteenth amendment and enacted the laws for its execution and that they are now enforcing it. They assume a personal proprietorship of all these measures and their execution to the exclusion of the Government and the people. These men got into the limelight as the officers, agents, and lobbyists of the Anti-Saloon League; and, although the prohibition amendment has become an accomplished fact and the laws to enforce it have been enacted, they are unwilling to forego the pleasures of prominence on the front pages of papers, the exercise of the power of that organization, and, above all things, to relinquish the salaries upon which they have fattened for so long a time. They assume that they are prohibition, and attempt to usurp the functions of the constituted authorities, duly elected and responsible to the people, in enacting laws and appointing officers to execute them; and they are in this way doing the organization, composed of good men and women, which they are misrepresenting, a great injury.

Mr. Wayne B. Wheeler, who, I understand, has been on a salary paid by the Anti-Saloon League since his early manhood, now poses as its general counsel and legislative agent, his duties and activities being chiefly that of a lobbyist here in Washington, is perhaps the most arrogant of these men. His pretensions to the control of the Congress of the United States are unprecedented, so far as I am informed, in the history of the Government. Mr. Wheeler and others with him have not hesitated to interfere in the election of Senators and Representatives in Congress and denounce them and attempt to

defeat their election when they fail to be governed by their dictation.

They denounce judges, district attorneys, and other officers whose duty it is to administer and enforce the laws of the country, and they interfere constantly in the appointment of all Federal officers, attempting to establish and enforce as the first qualification of such officers that they support such legislation and measures as to them, in their limited and narrow vision, may seem proper. Give them their way and prohibition framed and administered according to their dictation would become the sole provision of our Constitution and the sole object of the Federal Government and its administration, a condition inconceivable, disastrous to the people, and intolerable.

Some time ago my attention was called to a circular, broadcasted by the field superintendent of the league in Tennessee, a man who had recently been imported from a distant State, soliciting contributions for the support—that is, payment of salaries of local and national agents, containing brazen statements of the activities of Mr. Wheeler in these words:

A number of Congressmen who hold the balance of power and pile up majorities in Congress come from the Southern and Western States, where money for organization and educational purposes is scarce. They have always had to have help from the national league.

In addition to the above, the amount from Tennessee for the national league helps to provide for the maintenance of the entire national organization. It also helps to provide for the maintenance of our national office at Washington, D. C., under the very successful management of Hon. Wayne B. Wheeler, one of the greatest diplomats and attorneys in America.

And again:

From this office—that of Mr. Wheeler—needed legislation is initiated, a constant watch is kept on the actions of Congress, and when opposition appears danger signals are flashed to every State in the Union.

The success or failure of national enforcement depends upon the power of our national organization and its Washington headquarters, backed by the States, to defeat the nomination and appointment of enforcement officials, such as United States district attorneys, Federal enforcement officers, and agents, United States district judges, and many other applicants for office who are out of sympathy with the enforcement of prohibition. Every State logically must carry its proportionate burden of this expense.

There was a meeting recently connected with prohibition enforcement in the city of New Orleans, at which were present Mr. Roy Haynes, Federal prohibition commissioner, Mr. Wayne B. Wheeler, and Dr. Purley A. Baker, who also holds a position with the Anti-Saloon League, in which the two latter made assaults upon the courts of the country and the Congress. Whether this meeting was called by Mr. Haynes and attended by the other gentlemen, or whether it was the meeting of Mr. Wheeler and Doctor Baker and Mr. Haynes attended it, I do not know, but certain it is that Mr. Haynes was present, and listened to these assaults upon the judicial and the legislative branches of the Government, he being a part of the executive branch, without objection and without dissent. What I shall read appeared in the New Orleans papers and has heretofore been placed in the CONGRESSIONAL RECORD, December 12, 1922, by Senator BROUSSARD, of Louisiana. I read from the RECORD:

I want to reiterate what I said Sunday, said Dr. Purley A. Baker, general superintendent of the Anti-Saloon League of America, at the opening of the second day of the law-enforcement conference at the Grunewald Hotel, Monday. Twenty per cent of the Nation's Federal judges ought to be in the penitentiary at hard labor or impeached.

"These scoundrels who sit on the bench, and I use the term advisedly," said Doctor Baker, referring to the 20 per cent of the Federal judges who he said were obstructing enforcement of the prohibition law, "are drunkards themselves. I hold them responsible for the shooting down of 300 splendid law-enforcement officers during the last year."

Mr. Wayne B. Wheeler is reported as making at the same meeting these misleading and outrageous statements:

The average prohibition agent is patriotic and loyal, and the percentage of prohibition agents slain on duty is higher than the percentage of soldiers of the American Army slain during the World War. It is a shame that when these honored and hard-working men are shot down Federal judges often condone with the bootleggers instead of going after them.

We have no fear of Congress nullifying the dry legislation. The Anti-Saloon League controls Congress.

A folder, purporting to have been prepared by a man who styles himself "general secretary board of temperance, prohibition, and public morals, Methodist Episcopal Church," and a citizen of the State of Oregon, contains the statements I now read:

PUT ONLY DRYS ON GUARD.

There is another forward step which should be taken. One of the greatest hindrances under which prohibition now operates is that our enforcement officers in given States receive their appointments through the recommendation of United States Senators, and some of them without conscience or care have succeeded in filling the enforcement staff with men who are wet in their views, profligate in their sympathies, and actually antagonistic to the eighteenth amendment. There must be a sentiment created that will stamp out this treason and will make a United States Senator who deliberately secures the appointment of a United States judge, United States district attorney, or a Federal en-

forcement officer who is against the law he is sworn to enforce feel the wrath of the whole people for his betrayal of a sacred trust in thus thwarting the will of the Nation and making easy the violation of its law.

There is another leaf to turn in this volume of enforcement experience. The records will show that 135 Government representatives—officers of the enforcement service—have lost their lives as our representatives trying to have our laws respected. They have been shot down in cold blood, have been run over with high-powered cars, have been burned to death by high-voltage wires set as traps for them, have been poisoned, and every method of devilish ingenuity has been devised to destroy the representatives of this Government who enforce prohibition.

When we have sent our men up against this combination we have handicapped them with advices that they shall not shoot or do bodily injury except as a very last resort, and when as a last resort they have in a few instances fired on men resisting arrest and seeking to do them injury, these Federal officers have actually been put on trial for murder in the first degree, and the prosecuting attorneys—perjured scoundrels—who were sworn to give aid to the Government's agents but were champions of the bootleggers, have tried their best to railroad Federal officers to the gallows or to the State prisons for merely enforcing the prohibition law exactly as other officers are enforcing other laws.

Out in my State, Oregon, the prosecuting attorney who made himself infamous by thus prosecuting a Federal prohibition officer was rewarded by the pusillanimous governor with a position on the circuit bench of his State. I should, for the honor of my State, say that the people of the State attended to the governor's case on the 7th of November last.

Think of the character of the man who would impugn the motives and malign the officers of his State without justification of any kind, as I am credibly informed, and thus misrepresent the great church he claims to speak for.

The Anti-Saloon League in New York is a corporation, and its officers are subject to the laws regulating corporations in that State. A man by the name of W. H. Anderson was imported from another State and made superintendent of the league, with a salary of \$7,500. His conduct has been marked by violent and vicious assaults upon the governor and members of the general assembly; the United States Senators, judges, and other officers of that State, charging them with all sorts of offenses, calculated, if not intended, to shock confidence in them and destroy their efficiency as the duly elected representatives of the people. This self-constituted guardian of morals and of law and order in that great State has recently been investigated by the district attorney of New York, and, among other things, facts have been developed which tend to show that he obtained from the corporation \$24,700 for his own use, claimed by him to have been expended for the benefit of the league, but for which he produced no vouchers and made no statement of how the money was expended or to whom it was paid, or even where he obtained the money for such purposes. When called upon by the district attorney for a statement, he first offered to make full disclosure, and afterwards employed counsel, under whose advice he refused to give any information and claimed immunity under the statute of limitations.

Mr. President, these arrogant and intolerant men do not hesitate to assault and criticize the highest and the lowest Government officials of the executive, legislative, and judicial departments of the Government when in the discharge of their duties they do not conform to their individual views of constitutional or statutory law. They attack judges for exercising their judicial powers and discretion without knowing the facts upon which their judgments are pronounced. They hold over these officers implied threats of political defeat if they do not yield to their dictation or criticize them for unwarranted interference in governmental matters. When the Senate was considering what is known as the judges' bill, providing for the creation of some 24 Federal judges last year, if I can be allowed to refer to a personal matter, I had occasion to criticize Mr. Wheeler for officious and pestiferous interference in that legislation, and the field secretary to whom I have referred as a recent importation into Tennessee I am informed in a published statement unscrupulously and untruthfully charged that I was opposed to all law enforcement, notwithstanding that as a lawyer and as a judge I had always advocated and aided law and order and the enforcement of all the laws of the land in a just and reasonable manner, a record known to all the people of the State and of which he must have been informed—evidently because of my proper criticism of Mr. Wheeler.

When the time comes when I must abdicate the functions of the high office of United States Senator to any man, associations of men, or corporate interests and be governed by their dictation, I will no longer deserve to hold that high office. I have always conformed my views to the caucus determinations and platform pronouncements of my party, not involving constitutional questions, and have kept faith with my campaign pledges, but in all other things I have been, and will continue so long as I am here to be, governed by my best and conscientious judgment of my duty as God has given me the light to see the right, without considering what effect such action will have

upon my political fortunes. I certainly will not submit to the dictation of those who claim to control the Congress, and their misrepresentations and forecasted opposition have no terrors for me.

Mr. President, it is currently reported that all applicants for the office of prohibition director and other agents of that service must be approved by these men, and that the indorsement of the Senators and Representatives of the States where they are to be appointed and in accord with the administration are worthless without such approval. The limit was reached, I think, when recently the President had under consideration the promotion of a United States district judge of my State, a man above reproach in his private and official conduct, to be a justice of the Supreme Court of the United States, Mr. Wheeler, who was supporting another applicant for the place, insinuated things against him in a conversation with the President which he afterwards withdrew as unfounded, doubtless because he knew the President did not believe what he said, as well as because there was no truth in what he had said, and proceeded to compliment the distinguished jurist.

And yet these gentlemen talk about law enforcement when they are assaulting and making statements, without evidence and without facts to support them, against the courts of the country and the officers of the law, which will shock the confidence of the people in the judiciary of the country, the very citadels of good government and law enforcement and bring them into disrepute. I have never believed that a good citizen would be guilty of such conduct and have always considered it lawlessness of the worst character. The courts of the country are the sanctuaries of the law and the bulwark of the personal, civil, and property rights of the people, and no good and patriotic citizen will be guilty of conduct which tends to weaken and destroy them.

When judges and other officers are corrupt and fail to discharge their duties they can and should be proceeded against and removed from office by methods provided by law, and all good citizens who have just grounds of complaint will proceed in that manner.

Mr. President, the prohibition amendment and the Volstead law are laws of the Government of the United States and of the people of the United States. They are not the laws of any faction or of any organization. They must be recognized as the laws of the land, duly enacted, and must be enforced by the duly elected and constituted representatives of the people. When the people fully understand this they will submit to those laws and the violation of them will cease, but the people will not submit to be governed by self-constituted lawmakers, and will always resent efforts to control them coming in such questionable and un-American shape from such men or any private source. When these men cease their officious activities a great step will be taken toward acquiescence in the prohibition laws, for the American people are a law-abiding people and are willing to submit to the laws made by the majority.

Mr. President, the prohibition amendment is a part of the Constitution, and the statutes to enforce it have been passed and are in full force now. Where is the necessity of the activities of the gentlemen I have referred to? Can not the President, the Congress, and the courts of the United States, duly elected, appointed, and sworn, be trusted to execute the laws? Are they less trustworthy and competent than those gentlemen, self-constituted lawmakers and enforcement officers, unsworn and without the color of authority from the people?

Mr. TRAMMELL. Mr. President—

Mr. SHIELDS. I yield to the Senator from Florida.

Mr. TRAMMELL. Does not the Senator think also that when he proposes to get rid of those to whom he refers and when he is working in the interest of bringing about better enforcement, that he would also do something toward the accomplishment of that end if he got rid of the organizations and individuals who have helped to defeat law enforcement and tried to bring law enforcement into disrepute? Should not they also be gotten rid of in the interest of law enforcement?

Mr. SHIELDS. Unquestionably. If the Senator had listened to my argument, he would know that I am in favor of law enforcement. I am opposed to the bootlegger and his vicious business. The bootlegger is not against prohibition. There was no aristocracy of bootleggers until the Volstead law was passed. Under State laws they were mere pikers. While liquor was sold legitimately the bootlegger had no occupation nor did he dare to openly follow his nefarious trade under the State laws, for they were supported by the people and enforced as a rule vigorously and effectively, but now bootlegging has come to be a business, creating millionaires everywhere. I

know of no organization of the kind the Senator has referred to. I have no acquaintances who are law violators.

Mr. President, placing the enforcement of the prohibition laws in the Treasury Department and under the direction of the prohibition commissioner was a great mistake. It is always a mistake to single out a penal law for special treatment. Law enforcement has nothing in common with the Treasury of the United States. The enforcement of all other laws is entrusted to the Department of Justice, presided over by the Attorney General of the United States and a staff of able assistant attorneys, men learned in the law and in the administration of the penal laws of our country. The law should be changed and the jurisdiction of this law along with all others be given to the Attorney General, where it can be enforced intelligently and efficiently, and without the interference of outsiders. The enormous appropriations now made for the enforcement of prohibition would not be necessary as the expenses would be much less and the people would recognize this law as that of their Government and obey it.

Mr. President, I have no sympathy or patience with some men in this country who are advising the violation of the Volstead law because, as they assert, it is not supported by public sentiment. These men are not good citizens, and their conduct is little short of criminal sedition. My attention has been called to an address delivered by President Butler, of Columbia University, upon the subject of the prohibition laws, but I have not had time to read it. I do find in looking over it here on my desk that he said in that address:

It is lawlessness openly to affront the law. It is not lawlessness to agitate for its modification or repeal.

If this is President Butler's position, he is entirely right. While no man has a right to violate law, and should not be an accomplice to its violation by advising it, the people have a right to peacefully agitate changes in the fundamental and other laws of the country and to petition Congress for that purpose, and no man can be condemned for exercising that right.

Mr. President, I recently read an address by a great man whose birthday the whole country has recently celebrated, and I was so impressed with a statement therein concerning obedience to the laws of our country that I desire to read it here. It will do every citizen good to read it and ponder and follow it:

LINCOLN'S APPEAL FOR LOYALTY TO LAW.

Let every American, every lover of liberty, every well wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country and never to tolerate their violation by others. As the patriots of '76 did to the support of the Declaration of Independence, so to the support of the Constitution and laws let every American pledge his life, his property, and his sacred honor. Let every man remember that to violate the law is to trample on the blood of his father and to tear the charter of his own and his children's liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling books, and almanacs; let it be preached from the pulpit, proclaimed in the legislative halls, and enforced in courts of justice.

Mr. President, the prohibition amendment is a part of the fundamental law of our country, and the Volstead law was enacted by the Congress for its enforcement. This statute is the law of the land, and it must be obeyed so long as it remains unamended and unrevoked. The constitutional amendment, as I have said, will, in my opinion, never be abrogated. Those who are opposed to it might as well accept it and be resigned to the will of the majority of the people. The Volstead law may be amended to relieve it of some of its drastic provisions, but I know of no movement in the Congress for that purpose. The amendment chiefly agitated is to legalize the manufacture and sale of "light wines and beer." What these terms mean I do not know, as they have never been defined by those favoring them. If light wines and beer mean intoxicating liquors to be sold for beverage purposes, legislation for that purpose would be in violation of the Constitution and should not be passed. If this agitation has anything to do with the return of the saloon, the hotbed of moral and political corruption, it will fail. I would never support an amendment that would provide for these things, nor do I believe that any Congress will favor such an amendment to the present laws. I believe the Federal prohibition laws when relieved of the present hurtful influences surrounding their administration will be accepted by the people, and they can and must be enforced. We can not tolerate lawlessness of any character. The General Assembly of Tennessee some years ago passed laws for the prohibition of the manufacture and sale of intoxicating beverages, and, although there was some opposition in the beginning, in a few years they were accepted by the people and were reasonably enforced as all other penal laws of the State, and the

people of Tennessee are a law-loving and law-abiding people. I regret to say that this condition has been somewhat changed since the Federal prohibition laws were passed and under the circumstances attending their administration, but I hope that soon again we will have a reign of the law.

Mr. President, while the Federal Government is having some difficulty in enforcing the Volstead law, prohibition is not a failure, as claimed by some. Abolishing the saloon and otherwise removing the facility for obtaining intoxicating liquors, and the accompanying temptation to the young men of the country and those addicted to the drinking habit, has greatly reduced the consumption of such beverages and removed widespread dissipation, poverty, distress, and criminal conduct immeasurably; and any law which has accomplished this for humanity can not be said to be a failure.

Mr. President, I have given my reasons for the difficulties the Federal Government has encountered in the enforcement of the Federal prohibition laws, not with a view of criticizing anyone but with the hope by calling attention to these causes to aid somewhat in the removal of them and bring about such condition of affairs that the people will recognize those laws as the laws of their Government and as good citizens and cooperate in the enforcement of them. I believe that covering of the prohibition officers and employees under the civil service and making every effort to procure the very best men to fill those places and execute these laws will contribute much to remove the prejudice against them and to their just, reasonable and efficient enforcement; and if I have said anything that will contribute to that result, I think I will have done a service to my country.

APPENDIX A.

A bill (S. 1876) providing for the placing of Government employees engaged in the enforcement of national prohibition under the civil service.

Be it enacted, etc., That the executive officers authorized to be appointed by the Commissioner of Internal Revenue and the Attorney General of the United States to have immediate direction of the enforcement of the provisions of the national prohibition act of October 28, 1919, and persons authorized to issue permits, and agents and inspectors in the field service of the prohibition enforcement force of the Internal Revenue Bureau, and other special employees of the Attorney General, appointed pursuant to said national prohibition act, shall be appointed in accordance with the provisions of the act of January 16, 1883, known as "An act to regulate and improve the civil service of the United States." Within three months from the passage of this act the incumbents of positions hereby made subject to the competitive requirements of said civil service act shall be subjected to and must successfully pass open competitive examinations in order to retain their respective positions, unless already appointed in the manner prescribed in the civil service act.

SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

APPENDIX B.

A bill (S. 3247) to transfer to the classified service agents and inspectors in the field service, including general prohibition agents and field supervisors appointed and employed pursuant to the national prohibition act, and for other purposes.

Be it enacted, etc., That the positions now held by agents and inspectors in the field service, including general prohibition agents and field supervisors acting under the direction of the Federal Prohibition Commissioner and prohibition agents acting under the direction of prohibition directors, which positions have been created and the incumbents thereof appointed under the provisions of section 38, Title II, of the national prohibition act, are hereby transferred to the classified service.

SEC. 2. That the incumbents of the aforesaid positions who have been heretofore appointed by the Commissioner of Internal Revenue under the provisions of the said section of the national prohibition act, and who are now employed in such positions, are hereby transferred to the classified service as of their present grades or rates of compensation, respectively, and shall be continued in such positions without any or further examination, subject, however, to transfer, promotion, or removal the same as other employees in the classified service.

SEC. 3. That nothing herein contained shall be deemed or held to restrict in any way the provisions of section 38 of Title II of the national prohibition act authorizing the Commissioner of Internal Revenue to appoint without regard to the provisions of the civil service act of January 16, 1883, and the supplements to and the amendments thereof and the rules and regulations issued pursuant thereto, executive officers to have immediate direction of the enforcement of the provisions of the said national prohibition act and the persons authorized to issue permits thereunder, including the executive officers employed under the direction of the Federal Prohibition Commissioner and of the Federal prohibition directors: *Provided, however,* That the number of persons so appointed and employed in the bureau at Washington shall not exceed 12, and the number of persons so appointed and employed in the several directors' offices in the field shall not exceed an average of five in each director's office.

Mr. KELLOGG obtained the floor.

Mr. WILLIS. Mr. President, will the Senator yield to me a moment?

Mr. KELLOGG. For what purpose?

Mr. WILLIS. I simply want to ask unanimous consent to insert certain documents in the RECORD. It will take but a moment.

Mr. KELLOGG. If that is what the Senator desires, I yield.

Mr. WILLIS. In connection with the remarks of the Senator from Tennessee [Mr. SHIELDS] relative to law enforcement and the statement made by Dr. Nicholas Murray Butler on that subject, it seemed to me it would be useful to have in the RECORD just at this point certain newspaper comments relative to the statement made by Doctor Butler. I therefore ask unanimous consent to place in the RECORD at this point, in 8-point type, a brief editorial from the New York Evening Mail, another from the Washington Star, another from the Philadelphia North American, and a statement from Evangeline Booth, who is perhaps as well qualified to judge of the enforcement of the law as anyone in the country.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

[Editorial from the Evening Mail, New York City, Monday, January 29, 1923.]

PRESIDENT BUTLER'S BAD EXAMPLE.

Speaking of the fifteenth and eighteenth amendments to the Constitution, President Nicholas Murray Butler said before the Ohio Bar Association last Friday:

"In form and in fact, and judged by all the usual tests and standards, these two amendments to the Constitution of the United States are part of the organic law, with all the rights and authority which attach thereto. Nevertheless, they are not obeyed by large numbers of highly intelligent and morally sensitive people, and there is no likelihood that they can ever be enforced, no matter at what expenditure of money or effort, or at what cost of infringement or neglect of other equally valid provisions of the same Constitution."

When the president of a great university says that a certain law is unenforceable, buttressing his argument with implied praise of the "intelligence" and "moral sensitiveness" of persons who disobey it, is it any wonder that undergraduates of his university should have no scruple about breaking the law?

There is not, and there never has been, a law in existence which was "enforced" in the sense that it was 100 per cent efficient in abolishing crime. If the law forbidding the consumption and sale of liquor is unenforceable at Columbia University, so is the law against stealing unenforceable in a thieves' den.

As a matter of fact, the prohibition laws are not only enforceable but they are enforced over the greater part of this country. It is only in the larger cities that their enforcement is still baffling the authorities. But even in those larger cities, officials like United States Attorney Hayward and Commissioner Yellowley have shown what can be done, and it is only a matter of time until they achieve still more considerable success.

Doctor Butler's Ohio address was a long wail bemoaning the increase of lawlessness, which he put down to the passage of unpopular laws. He said the frequency with which persons in high places broke the prohibition law was leading others to have a contempt for all laws. He is quite right. But he will not mend matters by making apologies for these people, their "intelligence" and their "moral sensitiveness."

We have seen few spectacles less edifying than that of a college president upholding the "intelligence" and "moral sensitiveness" of people who, because they will not deny themselves liquor, are responsible for encouraging all the other crime that goes with bootlegging.

[Editorial on President Butler, of Columbia University, in the Evening Star, Washington, D. C., January 28, 1923.]

Dr. Nicholas Murray Butler now joins the ranks of the "defeatists" with respect to enforcement of the eighteenth amendment. In an address before the Ohio Bar Association he declared belief that the amendment never can be enforced, "no matter at what expenditure of money or of effort," and as he does not expect the amendment to be repealed within measurable time he sees no hope but that America will continue to be a Nation of lawbreakers, with full approval of "men and women of intelligence and moral sensitiveness."

The eminent educator's belief that the eighteenth amendment and laws enacted under it for suppression of the liquor traffic are unenforceable perhaps would carry greater weight if he were a little less reckless in laying the groundwork of his argument. But when he tells us that "the methods of czarist Russia and the Spanish inquisition" have been resorted to in futile efforts to enforce the law he tells us what we know is not true, and therefore we feel justified in harboring a reasonable doubt as to the infallibility of his judgment of the ultimate outcome. When so learned a man as Doctor Butler indulges in such extravagance of statement, it is to be feared his protest is

more inspired by passion than by zeal for the well-being of the Nation.

Doctor Butler succeeds only in making himself look foolish when he declares at this stage of the contest that the liquor traffic can not be suppressed. As a matter of fact, American sentiment day by day grows more determined that it must and shall be suppressed. There was a time when ordinarily good citizens thought it was "smart" and something of a joke to buy bootleg whisky, but their number is rapidly diminishing. Doctor Butler asserts that revolt against prohibition enforcement among "men and women of intelligence and moral sensitiveness" is nation-wide. That statement carries its own refutation. No intelligent man or woman could view with equanimity the moral debauchery resulting from the business of the bootleggers, and to give countenance to their carnival of crime is complete proof that "moral sensitiveness" is lacking. It may be that some day the eighteenth amendment will be repealed, or that the laws for its enforcement will be modified, but repeal or amendment will not be the result of such attacks as that launched by Doctor Butler at Columbus.

[From the North American, Philadelphia, Wednesday, February 14, 1923.]

MORALLY SENSITIVE BOOTLEGGERS.

Many Americans who believe in and practice law observance were surprised a few days ago when President Nicholas Murray Butler, of Columbia University, in a public speech assailed the eighteenth constitutional amendment and the Volstead act and offered a casuistical defense of violators of those enactments. Doctor Butler has been known as a political supporter of the liquor traffic; when he was a candidate for the Republican presidential nomination one of his principal assets was his strength with the wet forces in the party. But it was not generally expected that he, the head of a great university the majority of whose students are of foreign extraction, would make a calculated effort to justify and incite defiance of the laws of the United States.

Doubtless it was in part because the doctor has become habituated to the use of textbooks prepared by others that he merely transmitted in his address arguments that have been worn threadbare by the bootleggers and their lawless patrons. In fact, his utterance embodied so little that was new or weighty that if it had been delivered by a citizen of less prominence it would have attracted no attention. Incidentally, one must marvel at his hardihood in selecting a session of the Ohio Bar Association as the scene of his oratorical exploit. It was the judicial section of the American Bar Association that declared that "those who scoff at this law are aiding the cause of anarchy and promoting mob violence." And it was Ohio which last fall voted by a great majority for strict enforcement.

Naturally, Doctor Butler affirmed with unction that he and other advocates of nullification are "opposed to the saloon" and thoroughly approve its banishment. Here he makes two interesting admissions—first, that there is a dry sentiment throughout the Nation so strong that it has outlawed the saloon, and, second, that he is now against that agency of "personal liberty." But in adopting the canned arguments of the liquor advocates he loaned his name and influence to the most dishonest proposition in the whole wretched propaganda of booze. While professing to abhor the saloon, he knows, as one familiar with law and legislation, that if the demanded modifications of the Volstead act were to be made, so as to legalize the sale of "light" intoxicants, restoration of the saloon would be a matter of course and necessity. The places where the intoxicants were sold would have to be licensed, regulated, and taxed.

But if his condemnation of the saloon lacks candor, his implication that the sale of "light" intoxicants would eliminate lawlessness lacks logic. He might as well argue that the way to stop wholesale thefts would be to legalize petty larceny. The "light" intoxicants are obtainable now, in unlimited quantities, by anyone who has the price and is willing to participate in a criminal traffic; yet that does not diminish the demand for hard liquor but rather stimulates it.

Like every glib-tongued apologist for the bootlegger and his patrons, Doctor Butler seeks justification for defiance of the eighteenth amendment in the fact that several of the Southern States disregard the fifteenth amendment. These, he says, are "two important influences which are now making for lawlessness in American life." Coming from an obscure or uneducated person this absurd argument might be ignored. But it is worth examination, we think, when offered by a scholar who holds the degrees of A. B., A. M., and Ph. D. from Columbia, is a doctor of letters by grant from Oxford, and has been dubbed doctor of laws by Syracuse, Tulane, Johns Hopkins,

Princeton, Pennsylvania, Yale, Chicago, St. Andrews, Manchester, Cambridge, Wesleyan, Williams, Harvard, Dartmouth, Breslau, Brown, Toronto, Strasburg, Prague, Nancy, Paris, and Louvain Universities.

Doubtless it will appear a kind of heresy to question the authority of a legal expert so formidably endowed with the trappings of scholarship, yet we venture to do so. The fourteenth amendment, guaranteeing equal civil rights to negro freedmen, and the fifteenth amendment, extending the suffrage to negroes, were promulgated in 1868 and 1870, respectively. They were framed during a period of intense partisanship following the Civil War, and their ratification was procured by congressional coercion, military force, and exploitation of the negro vote. Back of these measures were radicals who had fought Lincoln to the day of his death, and the amendments embodied policies which he firmly opposed. Most of the Southern States ratified them while under "carpetbag" government supported by troops of occupation.

This aspect of reconstruction, indeed, furnished one of the darkest chapters in American history, for whatever justification there was for the amendments in theory, the main purpose behind them was partisan, to use the negro vote to take political control away from the whites of the South. The methods employed were so atrocious that multitudes of people in the North denounced them. The result was simply to solidify the South against an attempt to override its views, and to this day the sentiment is so nearly unanimous that Congress has never dared to attempt enforcement of the obnoxious measures.

Now, consider the history of the eighteenth amendment, which Doctor Butler pretends is in the same category. Its adoption followed an educational campaign extending over 75 years. No issue, except that of slavery, was ever so long and so thoroughly discussed; from platform and pulpit and in the press every aspect of it was analyzed before three generations. It was finally submitted to the States by a two-thirds vote of both Houses of Congress. At that time more than half the States in the Union had adopted prohibition within their own borders, but in every remaining State a desperate fight was made by the liquor interests, the most powerful bipartisan combination of business and politics the country had ever seen. Yet, within 13 months, so overwhelming was the sentiment, the prohibition amendment had been ratified by the required 36 States, and eventually 45 gave their approval. Out of 96 State legislative chambers, there were just three that failed to vote for ratification.

We do not cite these facts in any attempt to justify the non-enforcement of the fifteenth amendment but merely to show how uncandid and how defiant of history is Doctor Butler's pretense that the two can be linked as twin causes of lawlessness. The one was an instrument of partisanship and imposed by force, the other an expression of overwhelming public sentiment, regardless of party, made effective through orderly democratic processes.

It would be unjust to the abilities of an expert with 22 LL. D. degrees to ignore the fact that Doctor Butler enriched his excuses for law defiance with some striking epigrammatic phrases. Thus he held it an "illusion" that "enactments duly made by the legislature and upheld by a competent court are part of the law." They are such, he explained, "only if general public opinion supports and upholds them," if they are ratified by "a silent referendum in the hearts and minds of men." We hope the law schools and the courts will take due note of what should be known in American jurisprudence as the Butler referendum, as distinguished from the species provided by our imperfect Constitution.

But even more characteristic is his definition of those for whom he particularly pleads. We have read affecting arguments for the right of the worker, of the alien-born citizen, and of the "poor man" to "personal liberty" as embodied in booze, but Doctor Butler is concerned for a very different class. The law, he says, is "not obeyed by large numbers of highly intelligent and morally sensitive people"; he perceives "nation-wide revolt" among "men and women of intelligence and moral sensitiveness"; he grows emotional over "lawlessness which arises from the resistance of intelligent and high-minded people."

In this plea the surpassingly literate doctor is true to his traditions. He has frequently shown that he deprecates legislative interference with the business interests and personal desires of the "highly intelligent and morally sensitive" among the population; he would remove from them hampering statutory prohibitions and trust to the common law. This is a familiar doctrine; it has been invoked by the Butlers every time an exploited public has undertaken to curb rapacity, stamp out crimes of cunning against society, and promote

social and industrial justice. When laws were passed against secret railroad rebates, food adulteration, the exploitation of women and children in industry, the plundering of natural resources, the wasting of life through refusal to safeguard workers, always the cry was raised that these enactments were needless restrictions upon business and that the common law provided all needed remedies.

As we have frequently shown in these columns, the reactionary of the Butler type is the complement of the reddest of radicals. Their essential doctrines are alike. Both are anti-democratic; both are for the rule of a minority—the Bolshevik for government by manual workers, the Butlers for government by the "highly intelligent and morally sensitive."

Nor must any one assume that the eminent educator's solicitude for the class he champions is a mere ebullition of platform sentiment; a harrowing scene in a New York court room last Friday showed how precious is his reasoning to "highly intelligent and morally sensitive" violators of the law. Four brothers, prominent members of New York clubs and society, pleaded guilty to bootlegging, an official stating that their operations amounted to \$2,000,000 a year. All four had been indicted for selling liquor without prescribed permits, three for illegally possessing liquor withdrawn on forged permits. Lawyers as distinguished as Doctor Butler himself pleaded for them, and actually quoted in their behalf his ingenious argument that defiance of an unpopular law is an act justifiable and even virtuous. In spite, however, of their high intelligence, moral sensitiveness, and Butlerian immunization they were sentenced to jail. The court must have preferred to the Butler philosophy that of Edmund Burke:

"Men are qualified for civil liberty in exact proportion to their disposition to put moral chains upon their appetites; in proportion as their love of justice is above their rapacity; in proportion as the soundness and sobriety of their undertaking is above their vanity and presumption; in proportion as they are more disposed to listen to the counsels of the wise and the good in preference to the flattery of knaves."

It might even have called as a witness an exponent of many of Doctor Butler's reactionary views, but one who draws the line at countenancing criminality by the cultured. Thus says Justice Taft, of the United States Supreme Court:

"This is a democratic Government, and the voice of the people, expressed through the machinery provided by the Constitution, is supreme. Every loyal citizen must obey. This is the fundamental principle of free government. * * * It is dangerous doctrine for any citizen to attempt to excuse lawlessness. It is doubly dangerous when done by men in prominent positions."

While we would not deprive Doctor Butler of a single one of the degrees that give luster to his name, we must pronounce the opinion that for a highly intelligent and morally sensitive LL. D. he makes deplorable use of his honorary distinctions.

[From the War Cry, January 20, 1923.]

SHALL AMERICA GO BACK?

(By Commander Evangeline Booth.)

OVERWHELMING DRY MAJORITY.

"Who adopted prohibition? The people themselves through their Representatives in Congress and State legislatures. In Congress 347 votes were cast for submitting the eighteenth amendment to the State legislatures for ratification and 148 against. In the 46 States out of the 48 which ratified the amendment 5,084 votes were cast in the State legislatures for ratification and 1,263 against it. The total vote was 79 per cent for ratification and 21 per cent against."

"You can impress the whole situation on your mind by remembering that prohibition was 'put over' by only 46 of the 48 States in the Union, with only 98 per cent of the population and only 99½ per cent of the area of the United States. To sum up, only two small States—Connecticut and Rhode Island—refused to ratify. Prohibition could have been no surprise to the country, for 33 States were dry by State enactment and 87.8 per cent of the area and 60.7 per cent of the population were under license law before the eighteenth amendment went into effect. How ridiculous to say that this was secured by surreptitious means!

DRINK ALWAYS LAWBREAKER.

"The second count in this indictment is:

"Prohibition does not prohibit."

"It is rather strange that our enemies blow both hot and cold. We hear much about the drastic nature of the Volstead Act. It seems to prohibit overmuch, and our friends say: 'We would be satisfied if they would allow light wines and beers.' Then with almost the same breath they say: 'Prohibition

does not prohibit.' If it doesn't, then the 'wets' are well served. But they know it does and that every time they slake their thirst with the forbidden beverage they are breaking the law. This, in the drinker's realm, may not be looked upon as particularly bad; but then drink is always true to form, and in the days when it was legalized its devotees were the most flagrant breakers of the law in the land. Drink will not be regulated. Its lawbreaking proclivities are not new but are as old as history; be they laws of nature or laws of nations, laws of health or laws of home, laws of mind or laws of morals, the drink stands condemned—the red-handed criminal, the greatest lawbreaker in the land. So it is no new rôle for it to assume when its apologists cry, 'Prohibition does not prohibit!'

"That there are violations of the law all admit, but to cite that fact as an argument against the prohibition law is as futile as it would be to demand the cancellation of the whole decalogue because of repeated infraction of that law which is fundamental to all jurisprudence. We of the Salvation Army aspire to order our lives by the standard of these Ten Commandments, and to persuade others to do the same, and it would be about as sensible to engage in an effort to expunge that code from the Book of God because of its nonfulfillment in lives of men as it is to advance the theory that the prohibition law is a failure because it does not prohibit.

AMENDMENT MUST STAND.

"Because the laws against arson, theft, and murder are being violated, shall we abandon these laws and their penalties? Certainly not; and by the same token the eighteenth amendment and its supporting law must stand.

"The third count in this indictment is:

"'You can not by law make men moral.'

"This statement can not survive the acid test. Its reasoning is fallacious and its implications untrue.

"I must remind our friends that the question is not simply and only one of morals. That phase of the matter, I admit, to Salvationists looms up with singular distinctness. We hold that it is positively wicked to take God's good grain, capable of sustaining the lives of multitudes, who are now on the verge of starvation, and waste it, and not only so, but, in the process of waste, turn it into an unmitigated curse. No proprietary rights will absolve any from the moral obloquy of such conduct. To trade in that deceptive and destructive thing, apart from anything that statutory law may say, has long been regarded as of doubtful ethics. The beverage use of alcohol has proved with mathematical precision that it is a demoralizing and dehumanizing agent. Oh, yes! It is a moral question, but not only so. It is also an economic question, a sociological question, a political question, a scientific question, and startlingly these days have demonstrated it to be an international question. So it comes to pass that the economist, the scientist, the statesman, the sociologist, and the manufacturer have all joined with the moralist in the enunciation of this law that was graven by the hand of God in the constitution of human life.

LAW NECESSARY TO SOCIETY.

"The statement that morality is divorced from law is not true. Moral conduct is the aim and end of law. That is the meaning of law. Its enactment and administration has good conduct for its objective, and while conduct may at times be governed by a fear of penalty, law is still universally recognized as necessary to the existence of well-ordered society. When people say: 'You can't legislate people into good morals,' I reply: Into the whole fabric of our Nation's law is woven the ethical element, and any law that violates a correct moral standard is foredoomed to dishonor and its repeal is certain. By this test the old liquor-license laws were tried and condemned and ultimately superseded, and I feel quite happy in the realization that the same searching trial will reveal to the whole world the soundness of our present legislative position. Meanwhile depopulated prisons and rebuilt homes witness to the fallacy of this argument advanced against prohibition.

"The fourth indictment is:

"'Prohibition invades personal liberty.'

"Into this supposed tower of refuge probably more of our opponents run than any other, and from its flimsy ramparts they fling the cry: 'Prohibition invades our personal liberty by prescribing what we shall eat and what we shall drink; and we deny any man's right to proscribe our plum pudding or our exhilarating cup.'

"The principle, basic to the restraints of all law, is precisely that which enters into the prohibition law. No man objects to the denial of his liberty to steal; anyway, he doesn't object

to the curtailment of his neighbor's liberty in this direction; therefore he should intelligently accept the application of this same principle to that house-breaking, home-destroying, child-abusing, business-wrecking thief—alcohol.

NO OTHER CONSISTENT COURSE.

"Liberty, true liberty, is a priceless heritage, but no man's liberty comprehends a right to strike another down, not even if that other is his own child. In the exercise of society's right to protect itself, the Nation came to an appraisal of the monstrous wrong that was perpetrated upon it by the permission of the drink traffic. The process toward that evaluation was slow and tedious, but the final appraisal was correct—correct politically, correct economically, correct scientifically, correct socially, and correct morally. With the soul of the people awake to this solemn fact, there was no consistent course possible but for the Nation to wash its hands forever from the cruel partnership that had dishonored it and refuse longer to traffic in homes, in happiness, in health, in the very lives of its children. To speak this holy purpose our Nation flung her starry pen across the Federal books and by strictly constitutional means wrote into the organic law of the land that which every officer and every citizen is pledged to support. There is no liberty apart from law. There is but one alternative—anarchy.

TEST OF RESPECT OF LAW.

"What about the enforcement of law?

"That splendid American, the Hon. Charles E. Hughes, Secretary of State, says: 'Everybody is ready to sustain the law he likes. That is not in the proper sense respect for law and order. The test of respect for law is where the law is upheld even though it hurts.'

"Law must be, and must be obeyed. Yet there are those who argue that the breach of the prohibition law is excusable. Some say it is laudable, while others are defiant and make it their business in life to forward their sinister work of doing those things that the law prohibits. There are others that go still further, and in their wild thirst for gain the lives of their victims count not, and murder is added to fraud when they trade upon the weakness of their fellows and for fabulous prices sell deadly poison.

"When I begin to analyze the crowd opposed to prohibition I must confess I am impressed neither with their quality nor their reasoning. Clean and loyal citizens opposed to prohibition place their reputation in jeopardy by such association. How sorrowful that opposition to prohibition has united, as in a great dragnet, the good and the bad, so that the respected citizen and the professional brewer are cogitating and cooperating together for the repeal of the eighteenth amendment! But—they shall not pass!

"The prohibition law sprang from the soil and the soul. It germinated in remote and sacred places where mothers pray and fathers think. The country church, the country W. C. T. U., the country home and school took the lead—the West far in advance of the East. Long and wearisome has been the struggle. Shall those who fought and gained it never go back? 'Kansas,' William Allen White says, 'and States of her tradition and her kind would no more lose their 40 years' fight for prohibition than they would lose their 4 years' fight against slavery.'

COMPROMISERS ARE BANE.

"There are those that pronounce themselves in favor of light wines and beers. They are the 'happy medium' folk. To them the prohibition amendment is good, but its enforcement is bad. Their cry is 'modify.' Their name is legion. According to a recent independent poll, the number of these 'would-be' modifiers nearly equals the number of those who support unqualifiedly the amendment and its supporting legislation. Herein lies our danger. We have nothing to fear at the hands of the out-and-out 'wets.' They constitute a dismal and discredited minority. The compromisers are the bane that threatens the Nation's prohibition policy.

"A very large number, I might say nearly all, of these friends repudiate the saloon, and if it were a choice between the return of the saloon and prohibition then they would choose prohibition. But the menace of their position lies in the thought that light wines and beers are effectively divorced from the saloon and that the one can exist without the other. They say, 'No saloon—it is gone forever—but gives us light wines and beers.'

"Now, if it were possible to meet their demand, I am still for prohibition as prescribed by the present statutes. But it is not possible. It is not possible constitutionally. Intoxicating liquor is barred and little or no argument is needed to prove that so-called light wines and beers are of the proscribed class."

Mr. BROUSSARD. Mr. President, will the Senator from Minnesota yield to me to ask unanimous consent to have something inserted in the RECORD?

Mr. KELLOGG. If the Senator wishes to make any explanation, I wish he would wait until I get through. It will only take me about ten minutes.

Mr. BROUSSARD. I want to have something printed in the RECORD just at this point. It is the address delivered by Doctor Butler, and, inasmuch as the editorials have been offered, I would like to have the address follow the editorials.

Mr. KELLOGG. I have no objection to that.

Mr. WILLIS. I offered the editorials because the address of Doctor Butler had been referred to.

Mr. BROUSSARD. I understand. I ask unanimous consent that the address of Dr. Nicholas Murray Butler may be inserted in the RECORD, in regular RECORD type, immediately following the editorials offered by the Senator from Ohio.

The VICE PRESIDENT. Without objection, it is so ordered. The address is as follows:

LAW AND LAWLESSNESS.

AN ADDRESS DELIVERED BEFORE THE OHIO STATE BAR ASSOCIATION, AT COLUMBUS, OHIO, ON JANUARY 26, 1923, BY NICHOLAS MURRAY BUTLER.

In this presence of a distinguished and representative company of American lawyers and men of affairs, it would be quite easy to speak once again with appropriate rhetorical flourishes those sonorous platitudes concerning the law and its supremacy with which we are all familiar. One who does not venture beyond the limits of common consent may gain universal applause, but he does not contribute to progress. My preference is to raise, with such definiteness as the time at my disposal will permit, some fundamental and doubtless disputed issues which I conceive relate directly to the subject under discussion.

That disregard of law, disobedience to law, and contempt for law have greatly increased and are still increasing in this country is not to be doubted. Similar happenings are taking place in other parts of the world, but one may wonder whether the unenviable supremacy of the people of the United States in this field is not fixed for the time being. In all parts of the country judges and lawyers are discussing the prevalent spirit of lawlessness, and usually end by asserting emphatically that the law must be and shall be enforced exactly as it is written without fear or favor. This has a fine sound and is universally applauded, but it contributes absolutely nothing to an understanding or solution of the grave problem which widespread lawlessness has raised. An examination of the proceedings of the recent annual meetings of bar associations throughout the country establishes the fact that almost all of them have been hearing discussions of this topic. Its importance, therefore, and its nation-wide character may be taken for granted.

It is rather a sorry outcome of our century and a half of existence as an independent Nation, proclaiming to the world the discovery of the best possible method of providing for liberty under law, that we should now be pointed to as the law-breaking nation par excellence. At the meeting of the American Bar Association, held in San Francisco in August last, I listened to the report of a special committee on law enforcement. That committee called attention first to the fact that we in this country are without adequate and accurate statistical information as to crime, and will remain so until the Department of Justice is in position to establish a bureau of records and statistics, where all relevant information may be assembled and preserved and to which recourse may be had by courts and public officers throughout the Nation. That committee offered a most disheartening and indeed shameful comparison between the law-abiding character of the people of the Dominion of Canada and that of the people of the United States. They seemed to feel that the situation was somewhat relieved by the fact that when Canadians cross the border they become proportionately less law abiding than when at home. Some of us might think that, contrary to the adage of the poet Horace, these immigrants had changed both the sky above them and the spirit within them and that the inference was not complimentary to the United States. However that may be, the Dominion of Canada, with a population of some nine millions, stands in most enviable contrast to Cook County, Ill., with a population of some three millions, when burglaries, larcenies, and homicides are taken as standards of comparison.

It was of particular interest to hear in that report the statement that, particularly since 1890, there had been and continues to be a constantly widening and deepening tide of lawlessness in the United States. I hold that date, 1890, to have marked the turning point for the worse in more than one field of thought and action, and to be a truly significant date for anyone who would understand the prevalent lawlessness among our people.

It seems clear that the remedies usually suggested for this lawlessness are very superficial and can have none but superficial and temporary results. It is all well enough to increase the number of judges, to make criminal trials more speedy and sentences after conviction more severe, and in various other conventional ways to strengthen the administration of justice. We may, however, do all these excellent things, and lawlessness will still continue to exist and to grow unless its underlying causes be reached and dealt with. Human experience has long since exploded the doctrine that a severe punishment will deter from the commission of crime. The fear of detection will so deter, but the fear of punishment will not.

In order to get at the fundamental facts in respect to lawlessness we must dig down somewhat deeper than ordinary. There is, first, the body of new information just being brought to general public attention, which appears to indicate that during the past hundred years and more the material progress of man and his power to control and apply the forces of nature have far outrun both his intellectual and his moral capacity and competence. One of the most distinguished of American scientists recently said in my hearing that he had about come to the conclusion that all his discoveries and advances were harmful rather than helpful to mankind because of the base and destructive uses to which they were likely to be put. He insisted that, in the present state of public intelligence, if there was a lofty use and a lower use of his discoveries and inventions, evidence multiplied that the lower use would be the first chosen. He pointed, among other things, to the fact that the Great War, with all its destructiveness and appalling loss of life and treasure, could never have been fought except by the use of two of the most beneficent and striking of modern inventions, namely, the telephone and typhoid prophylaxis. What, he added, is the use of inventing and improving the telephone or of discovering and applying typhoid prophylaxis if the killing of millions of men is the best use that can be made of them?

Frankly, we must face the possibility that we are living in a material world to which but a portion of the people are intellectually and morally adjusted. These, and these alone, be they few or many, are in a state of mental health. The others are pathologic cases from the intellectual and the moral point of view. They are not mentally defective as that term has been understood, nor are they in any technical sense insane; but they are sufficiently maladjusted to their environment to be lacking in complete mental and moral health. If conditions like these be superadded to the general temperament and known characteristics of the people of the United States, it is not difficult to see how a widespread spirit of restlessness, of dissatisfaction with law, and eventually of disregard for law, might be brought about. The more advanced of our students and investigators of mental life and mental health are quite alive to these conditions, but as yet they are voices crying in a wilderness.

The report of the American Bar Association's committee on law enforcement mentioned the year 1890 as significant in the history of the development of lawlessness in this country. That happens to be about the time when the standards and methods of general education which had existed in the United States for more than a half century began to give way before those that have since become increasingly influential not only in our schools and colleges but in our homes. For various reasons, which need not be gone into here, there then began to be an increasingly sympathetic response to the doctrine which had for some time been preached: That no youth should be asked to follow any course of study that he did not like and that was not of his own choosing. His tastes and early capacities or, perhaps, his whims were to take the place of human experience and the general interest in determining how he should spend his time while in the process of formal education. A quick effect, and, indeed, an almost unconscious effect, of the practice of such a doctrine is to displace discipline and to arouse in the mind of youth contempt and disregard for those things which he has not chosen to know, regardless of what may be the opinion of others concerning their value and importance. In this way the individual learns to separate his own tastes, his own interests, his own occupations, from those of the community of which he is a part and only to prefer and to follow his own. That subtle and many-sided influences would in this way be set in motion to make for lawlessness seems obvious.

Until about 1890 the ruling notion in American education was that there existed such a thing as general discipline, general knowledge, and general capacity, all of which should be developed and made the most of by cooperation between the home

and the school. As a result of a few hopelessly superficial and irrelevant experiments, it was one day announced from various psychological laboratories that there was no such thing as general discipline and general capacity, but that all disciplines were particular and that all capacities were specific. The arrant nonsense of this and the flat contradiction given to it by human observation and human experience went for nothing, and this new notion rapidly spread abroad among the homes and schools of the United States, both to the undoing of the effectiveness of our American education and to the spread of a spirit which makes for lawlessness.

It would surprise a great many excellent persons to be told that the schools upon whose maintenance they are pouring out almost unlimited sums raised by public tax, were, quite unconsciously, doing all that they reasonably could to implant a spirit of lawlessness in those who come under their influence. And yet that is the sober truth. If a youth be taught at home or in school that there are no fundamental underlying principles, but that the world is his oyster, to be consumed at such time and in such fashion as he may see fit, or that it is to be made over to his heart's desire, one need not wonder when a spirit of lawlessness and restlessness under order and constraint finds expression in his life. The platitude makers tell us sometimes that education is preparation for life, and sometimes that education is life; take either horn of the dilemma, and the sort of education to which we are now subjecting our youth is too often a training in the spirit of lawlessness. No person can be called educated who will not do effectively something that he does not wish to do at the time when it ought to be done.

If these considerations be correctly stated, a secure foundation for lawlessness has been laid in our national life, and an invitation to lawlessness has been extended by the recent material progress of man and by the changes that have come over our national system of education. The sum total of the effects of these causes is to predispose to lawlessness. In such case there is no effective barrier raised against human passion, human greed, human revenge, or human cupidity. First comes individual interest and individual satisfaction; then group or class privilege or advantage; and last of all, the interest of the general public, which in a healthy and law-abiding society will always be supreme.

Upon the foundation so laid there has been rising for some time past a structure making for lawlessness, which has had the cooperation of many builders, most of whom have been quite unconscious of the part they were playing. Our legislatures, both State and national, and our various administrative boards and bureaus are largely made up of those whom Thomas Jefferson wittily described as demilawyers. Their ruling passion is a statute or an administrative order. Their constant appeal is to force, to what has come to be known as the police power of the State, and they exercise it with a ruthlessness and a ferocity from which kings and emperors have been accustomed to draw back. Shortly before retiring from public life former Senator Thomas, of Colorado, himself a learned lawyer of high type, made a speech in the Senate in which he pointed out that within a relatively short period of time we Americans had some seventy thousand statutes. State and national, passed for our guidance and government. To state this fact is to name a powerful force making for the spread of lawlessness. When the temporary is confused with the permanent, and when the unimportant and trivial is mistaken for that which has broad reference and wide implication, intelligent citizens must not be expected to look seriously upon statutes and statute making or to treat all statutes with equal respect. The strain is quite too much for common sense and for a sense of humor to bear. I well know that it is the opinion of lawyers that whatever enactments are duly made by a legislature and upheld by a competent court are part of the law. But that is an illusion. They are only part of the law if general public opinion supports and upholds them. There is a silent referendum in the hearts and minds of men on every important enactment by a legislature and on every important decision by a court which involves a fundamental principle of civil liberty. Without a favorable issue in that referendum, the statute and the decision alike are written in water. It must not be forgotten that law is but one form or type of social control.

It is not so many years ago that Americans used to laugh at the Prussian bureaucracy and to point with scorn at the signs "Verboten" that were to be seen on every hand in Prussia. Our bureaucracy is quite as bad as that of Prussia ever was, without being so efficient, and now we have a dozen Verboten signs in the United States to every one that Prussia can show. Not a few of the printed forms addressed to citizens by various

bureaus of the National and State Governments are rude and peremptory to the point of insolence, and are justly resented by self-respecting citizens. The multiplication of petty crimes has gone on until the list includes scores of perfectly innocent departures from the conventional and scores of perfectly harmless infractions of good manners and good conduct.

No longer do the demilawyers stop with defining these acts as misdemeanors. Not infrequently they are elevated to the rank of felonies. Is it any wonder that an intelligent and self-respecting public revolts at that sort of official treatment? It may just as well be frankly stated that a very distinct contribution to the spread of lawlessness is made by the ease and inconsequence with which we make and modify the law. Did time serve, it would be possible to give illustration after illustration drawn from the statute books and administrative codes of States in all parts of the Union. Thomas Jefferson would rise in his grave if he could know what is now going on in the United States, not infrequently at the behest and under the influence of the political party which still professes allegiance to his name and principles.

In this respect things have come to such a pass that the really public-spirited legislator who should vote no on every roll call in respect to the final passage of a bill would be rendering public service nine times out of ten. The common law will take care of our developing needs in far better fashion than will statutes in all but a very small class of cases. The influence of a sound education and a true religion, if really believed in instead of being merely talked about, would in time build up a spirit of obedience to law, which no possible system of law enforcement can ever bring about. Through centuries a habit of obedience to the Ten Commandments may be built up among men, but the Ten Commandments can not be enforced by all the governments and armies in Christendom.

This is but one more phase of the never-ending struggle between reason and force in human life. Civilized States, and particularly those which rest upon a basis of popular government, are always steadily aiming to widen the area in which reason rules and to narrow that in which force controls, both as to their internal policies and as to their international relationships. We in this country, however, have of late been pursuing the reactionary policy of widening the area where force controls, and this is justly resented by a very large number of Americans. Their resentment leads naturally, in the case of not a few, to lawlessness in one of its many forms. It is no answer to say that these statutes and these administrative orders are made in pursuance of law, and that at bottom they rest, through the medium of our representative institutions, on the will of the majority. The will of the majority is under precisely the same limitations as was the will of the monarch. In the process of gaining freedom, it has never been the intention of modern men to substitute a tyrant with many heads for a tyrant with one head. They have endeavored and have struggled to mark out and to define an area of civil and political liberty into which no tyrant may enter, whether he have one head or many. The invasion of that area by the many-headed tyrant under the ostensible forms of law is just as repugnant to the lover of liberty as is its invasion by the monarch claiming to enter by divine right. When the law commits a trespass, it can hardly expect that sort of hospitable welcome which is cheerfully offered to an invited guest.

These were once fundamental principles of American public policy. They were universally accepted by the fathers and were laid down as the chart by which our ship of state was to be guided as it set out on its memorable voyage across the seas of political experience. It needs no argument to prove that we are tending to lose sight of these fundamental principles and to try all over again, although in new forms, the world-old experiment of tyranny and despotism and interference with personal life and private conduct. It has been settled and generally accepted law in the United States for nearly two generations that when an undertaking privately organized becomes charged with a public interest, then public supervision and control may rightly be established over it. Similarly, it is only when the private life and personal conduct of an individual become so charged with a public interest that public authority has any proper concern with them at all. It would not be unbecoming for us all to reread at intervals the Declaration of Independence and to reflect seriously upon its words. If the American of to-day were to read Thoreau's essay on Civil Disobedience, he might be startled but he certainly would be enlightened.

It would be lacking in frankness and sincerity not to point out two important and law-made influences which are now making, and seem likely long to make, for lawlessness in American life. The American people as a whole can not escape full share of the responsibility for these two influences, although

they are in part due, no doubt, to what Walt Whitman described as "the never-ending audacity of elected persons."

The first is the fifteenth amendment, proclaimed in 1870, and the second is the eighteenth amendment, proclaimed in 1919. In form and in fact, and judged by all the usual tests and standards, these two amendments to the Constitution of the United States are part of the organic law, with all the rights and authority which attach thereto. Nevertheless they are not obeyed by large numbers of highly intelligent and morally sensitive people, and there is no likelihood that they can ever be enforced, no matter at what expenditure of money or of effort, or at what cost of infringement or neglect of other equally valid provisions of the same Constitution. The purpose of those who advocated and secured the adoption of these two amendments was excellent, but they did not stop to deal with the realities of politics and of public morals.

When the thirteenth amendment abolished slavery, and when the fourteenth amendment provided for the reduction of the representation in Congress from any State which abridged the right of any citizen to vote, except for participation in rebellion or other crime, the matter might well have rested there. All that was needed was the courage and the public opinion to enforce the fourteenth amendment, and speedily the several States would have made provision for their own protection by which the intelligent colored man would have been permitted to vote. Gen. Robert E. Lee himself testified in this spirit before the reconstruction committee of the Congress. The Civil War had but just ended, however, and passion ran high. Therefore, the fifteenth amendment was proposed and ratified, and the right of suffrage was given a national basis and protected by a national guaranty. What has been the result? After a half century the colored man votes in those States where he voted when the fifteenth amendment was passed, but he rarely votes, and certainly does not freely participate in public life, in those States where he did not vote then. Every attempt to enforce the fourteenth or fifteenth amendments has been denounced as a force bill. Oddly enough, it has been so denounced by those very Senators and Representatives who will go to any length to enforce the provisions of the eighteenth amendment. The practical question is not whether or not the colored man should vote in the Southern States, but whether the American people will frankly face the problem presented by the nullification throughout a large part of the land of a most important provision of the Constitution of the United States. Everyone knows what political results follow from the failure to enforce the provisions of the fourteenth amendment and from the skillful measures which have been enacted to escape its provisions without actually violating it. All this is a matter of history. No one in his senses wishes to overturn white government in the Southern States; but everyone with the American spirit in his heart wishes fair play and a fair chance for the colored man and the removal of any continuing cause of lawlessness which has its foundation in the organic law itself. It is elementary that an individual or a community may not defy law in one respect without developing a habit of disregard for all law. If the American people stand idly by and see the fifteenth amendment unenforced, and unenforceable because it runs counter to the intelligence and moral sense of large elements of the population, must they not either remove the offending cause from the law or leave off bewailing the lawlessness to which its presence naturally leads? This generation has become so accustomed to the cavalier treatment of the fourteenth and fifteenth amendments that it rarely weighs, and little understands, the influences flowing from them for lawlessness. It is a fair question whether, if the fifteenth amendment were repealed and the fourteenth amendment were enforced, the political and social condition of the colored man in the Southern States would not be vastly improved. Certainly a powerful and continuing cause of lawlessness would have been eliminated, and the political condition of the colored man would be no less advantageous than now.

The situation with regard to the eighteenth amendment is even worse, because the revolt against it is not confined to men and women of intelligence and moral sensitiveness in one section alone, but is Nation-wide. It will not do to attempt to silence these persons by abuse or by catch phrases and formulas of the hustings. These men and women dissent entirely from the grounds upon which the case for the eighteenth amendment was rested, and they regard its provisions and those of the statutes based upon it as a forcible, an immoral, and a tyrannical invasion of their private life and personal conduct. They have no possible interest in the liquor traffic, and they are without exception opposed to the saloon. But they are equally op-

posed to making the Constitution of the United States the vehicle of a police regulation affecting the entire country and dealing not alone with matters of public interest and public reference but with the most intimate details of personal and private life, including food, drink, and medical treatment. The moral sense, as well as the common sense, of very many people is affronted by a policy which will expend millions of dollars and use the methods of Czarist Russia and of the Spanish Inquisition to enforce one provision of law while others of far greater significance and public importance are accorded conventional treatment or less.

It will startle many excellent people to hear the following sentences from the recent book of Outspoken Essays, second series, written by the dean of St. Paul's Cathedral, London. The author, Doctor Inge, is one of the most learned and most eminent of English churchmen. "Suppose," says Dean Inge, "that the State has exceeded its rights by prohibiting some harmless act, such as the consumption of alcohol. Is smuggling in such a case morally justifiable? I should say yes; the interference of the State in such matters is a mere impertinence." (Inge, William Ralph—Outspoken Essays, second series (New York, 1922), p. 134.)

Or if one crosses the Atlantic he may find with increasing frequency expressions like these unanimously adopted by a recent grand jury in Kings County, N. Y., whose limits are identical with those of the community which has long been known as the City of Churches. Referring to the existing laws for the enforcement of the eighteenth amendment, this grand jury expressed itself as follows:

"Whatever may be our individual ideas upon the subject of temperance and prohibition, we believe that there can be no doubt but that this law tends to debauch and corrupt the police force. It interferes with the liberty and private life of moral, law-abiding citizens. It even goes so far as to brand good men felons because in their own conscience they desire to indulge in personal habits in which they find no harm. It has not checked the misuse of intoxicating liquors, but it has seriously hampered their proper use. We feel that it can never be enforced, because it lays down rules of private conduct which are contrary to the intelligence and general morality of the community. It is an attempt by a body of our citizenship, thinking one way, to interfere with the private conduct of another body thinking another way." (New York Globe, Dec. 29, 1922, p. 2.)

These are not expressions of a spirit of lawlessness. They are a simple declaration of the fact that lawlessness is certain to follow for some types of law. The answer which is made is instant and resounding. We are told that the eighteenth amendment was adopted in accordance with the provisions of the Constitution itself, and that its validity as an amendment has been affirmed by the United States Supreme Court. We are told then that all that those who disagree with its principles and purposes have to do is to accept defeat, to recognize themselves as in the minority, and to obey the law. Perhaps this ought to be the case, but it is not, and I greatly doubt if it ever will be, at least within the lifetime of any man now living. The majority is not always right, nor is its verdict final. The Old Testament records a leading case in which 450 prophets of Baal were worsted single-handed by the prophet Elijah, who had God and right on his side. Four hundred and fifty to one is a very unusual majority, but it was not enough.

As Abraham Lincoln pointed out in his argument against the finality of the decision of the United States Supreme Court in the Dred Scott case, he was not violating the law or urging its violation. He did not propose to set Dred Scott free by force in opposition to the court's decision. What he did propose, however, was to agitate and to lead an agitation for such political action as would make impossible the conditions which had led the Supreme Court to make its decision in that particular case. It is lawless openly to affront the law. It is not lawless to agitate for its modification or repeal.

No one who is familiar with the practical workings of our political system would expect either the fifteenth or the eighteenth amendment to be repealed within measurable time. So far as one can see, therefore, we are shut up to the alternative of their attempted enforcement by soldiers and police and special agents and detectives and spies or to their abrogation over a great part of the land by local initiative and common consent. Either alternative is humiliating and degrading. If our people have taken untenable and harmful positions in respect of securing suffrage for the colored man and in respect of promoting the cause of temperance and total abstinence and in removing the abuse and the nuisance of the public bar, they should be willing to retrace those steps and start toward their

wise and splendid goals by other and more practicable paths. I know of no one who dares to hope for any such fortunate outcome of the unhappy conditions that now confront us.

Speaking for myself, I may say that my first political activity in my native State of New Jersey was in cooperation with colored men and on their behalf and in support of movements to restrict and to abolish the saloon or public bar. In my own congressional district there were large numbers of colored voters who were eager, intelligent, and public-spirited. To see colored men of that type participate freely in the public life of other districts and other States would be a great satisfaction. But it is now plain to me that the road which was taken to that end was a wrong road. It has delayed, not hastened, the political participation of the colored man in the public life of the United States. Similarly, it was my fortune as a member of the committee on resolutions of the New Jersey State Republican convention of 1886 to give the casting vote in favor of the platform declaration which declared war on the saloon. That platform declaration is supposed to have cost the Republican Party that election, but it was a sound and true declaration none the less. Later in the State of New York it was my lot to work vigorously with those who attempted to drive out the saloon by use of the power of taxation. Therefore I am personally committed through many years of practical political action to the cause of universal suffrage and to the abolition of the saloon. Perhaps for that very reason I feel so strongly as I do the disastrous mistakes that have been made and the evil consequences that have followed and are certain long to follow in the life of the people of the United States. Certainly there can be no more distressing and no more disintegrating form of lawlessness than that which arises from the resistance of intelligent and high-minded people on grounds of morals and fundamental principle to some particular provision of law.

The American people must learn to think of these things and to give up that unwillingness, which seems so characteristic, to discuss or to deal with the disputed and the disagreeable. We have almost gotten to a point where public men, and those who should be leaders of opinion, hesitate to speak until they know what others are likely to say and how what they say will probably be received by the press and the public. There are not so many as there should be who are willing to take the risk of being unpopular for the sake of being right.

SALARIES OF UNITED STATES ATTORNEYS AND MARSHALS.

Mr. NELSON. Mr. President, will my colleague yield to me?

Mr. KELLOGG. I yield if it is a matter that will take no time.

Mr. NELSON. I think it will take only a moment. I ask unanimous consent for the present consideration of the bill (S. 425) fixing the salaries of certain United States attorneys and United States marshals. I hope the Senator will allow me to make a brief statement.

The object of the bill is to confer upon the Attorney General the power to fix the rates of compensation of United States marshals and United States attorneys within certain limits. The salaries of United States attorneys are to be between a minimum of \$3,000 and a maximum of \$7,500, and the salaries of the marshals between \$3,000 and \$6,500. The salaries are to be based upon the amount of business done within the last four years.

Mr. ROBINSON. Mr. President, will the Senator from Minnesota allow me to ask him a question?

Mr. NELSON. Certainly.

Mr. ROBINSON. The Senate has entered into a unanimous-consent agreement to consider unobjected bills on the calendar under Rule VIII during the morning hour on next Monday.

Mr. NELSON. If the Senator will allow me, there has been a great demand for the passage of the bill, and I am very anxious to get it over to the House as soon as possible. The Committee on the Judiciary are unanimously in favor of the bill, and I think there will be no objection to its consideration if the Senator from Arkansas will allow me to make a brief explanation in reference to its subject matter.

At present, owing to the fact that the salaries of marshals and district attorneys have been fixed at different times, there is a great disparity and diversity in their compensation. An attempt was made to secure the passage of a bill prescribing their salaries in detail, but that measure was objected to. In 1919 Congress passed a law permitting the Attorney General to fix the salaries of clerks of United States courts within certain limits. That law has worked satisfactorily. It is now proposed in the pending measure to allow the Department of Justice, upon the basis of the work of these officials for the last four years ending this fiscal year, to fix the annual salaries of United States attorneys between a minimum of \$3,000 and a maximum of \$7,500,

and to fix the annual salaries of United States marshals between a minimum of \$3,000 and a maximum of \$6,500. It is proposed only to make an exception in three cases, and those exceptions are as to the salaries of the United States district attorneys for the district of New York, for the district of Chicago, and for the District of Columbia, which may be fixed within a limit of \$10,000 per annum. That is all there is in the bill, and I trust there will be no objection to its consideration.

The VICE PRESIDENT. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert:

That the salaries of the United States attorneys and United States marshals for the several judicial districts of the United States shall be fixed by the Attorney General, beginning July 1, 1923, at rates not less than \$3,000 nor more than \$7,500 per annum for attorneys and at rates not less than \$3,000 nor more than \$6,500 per annum for marshals, the amount to be based in each instance upon the business transacted during the four years ending June 30, 1923: *Provided*, That the salaries of the United States attorney for the southern district of New York, the northern district of Illinois, and the District of Columbia may be fixed at rates not exceeding \$10,000 per annum for each of said districts.

The Attorney General may increase or decrease any of the salaries fixed, as aforesaid, within the limits prescribed in the foregoing section if, upon investigation, he finds that there has been a material increase or decrease in the volume of business transacted: *Provided*, That no salary fixed under the provisions of this act shall be changed more than once in any four years.

All laws or parts of laws, in so far as they are in conflict with the provisions of this act, are hereby repealed.

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill authorizing the Attorney General of the United States to fix the salaries of United States attorneys and United States marshals of the several judicial districts of the United States within certain limits."

THE MERCHANT MARINE.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12817) to amend and supplement the merchant marine act, 1920, and for other purposes.

Mr. KELLOGG. Mr. President, I listened this afternoon, with some degree of surprise and with deep regret, to an assault made in this Chamber upon the judiciary of the United States, which has been the protection and the bulwark of American liberty for more than 140 years. Manifestly it will be impossible for me at this late hour to attempt to answer a carefully prepared address which required an hour and a half to deliver; but I can not allow this opportunity to pass without entering my protest against doctrines which, if enforced, would be subversive of the liberty of the American people and destructive of all our institutions.

Should we take from the Supreme Court the power to declare a law which was passed in violation of the fundamental law of the land to be unconstitutional, we should place all the liberties of the American people in the hands of one body, and there would be no Constitution of the United States left. We can not have a written Constitution, Mr. President, which defines the powers of the Federal Government and of the State governments, which provides in the Bill of Rights for the protection of American citizens in their liberties for which our forefathers struggled, unless we have a Supreme Court to enforce the provisions of that Constitution.

Mr. President, three times in the history of this country, in periods of great political excitement, similar assaults have been made upon the power of the Supreme Court as that which was made in this Chamber this afternoon, and three times those assaults have failed because the American people are loyal to the principles which were established by our ancestors more than 140 years ago.

Mr. President, when the Constitution of the United States was adopted the people of the Colonies had just passed through the sufferings of a long, weary, and terrible war for liberty. They were determined to write their Constitution defining the rights and liberties of the American people, defining the powers of the legislature, prohibiting it from overstepping the bounds of constitutional limitations, and preserving forever the liberties written in that immortal document.

Mr. President, the principles of the Bill of Rights and many of the principles on which this Government is founded and which are written in the Constitution were not discovered by

the men who wrote the Constitution. Many of them were principles for which the Anglo-Saxon race had struggled for 600 years since the memorable day at Runnymede; they were principles which had long been struggled for in the upward progress of the human race.

Not only that but the men who wrote the Constitution and the great men who interpreted it in the campaign for its adoption by the States perfectly understood that there was vested in the Supreme Court the power to declare an act of Congress unconstitutional if it violated the fundamental law of the United States—the Constitution. It was so announced by at least 20 of the delegates to the convention which framed the Constitution, and only 3 dissented from that view. It was so announced by Alexander Hamilton and Madison and by others in that the greatest of campaigns before the American people, the campaign for the adoption of the Constitution. That doctrine has been sealed by repeated decisions of the Supreme Court of the United States from the earliest day of our judicial history, even before the case of Marbury against Madison, down to the present time, in a long line of decisions, and there has been no decision to the contrary by any branch of the judiciary of the country. And why? Marshall pointed out the reason, namely, that it was necessary for the preservation of the American form of government that the legislative department should not have a right to overstep the bounds fixed by the written Constitution.

Oh, says the Senator from Oklahoma—

Mr. BROOKHART. Mr. President—

The PRESIDING OFFICER (Mr. FRELINGHUYSEN in the chair). Does the Senator from Minnesota yield to the Senator from Iowa?

Mr. KELLOGG. No; I can not yield, because I only have a moment.

The PRESIDING OFFICER. The Senator from Minnesota declines to yield.

Mr. KELLOGG. "Oh," says the Senator from Oklahoma, when asked the question what would happen under his proposal if the Congress should pass a law providing for unreasonable searches and seizures and providing further that the papers so unlawfully taken could be used to convict a man of a crime, "I decline to assume such a condition." Yet such an attempt was made in this country, and the Supreme Court of the United States declared it unconstitutional.

The Constitution would not have been adopted but for a general understanding that there was to be annexed to it certain amendments known as the Bill of Rights. Let me refer to them for a moment. The first amendment provides:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Those are immortal principles for which not only our ancestors struggled in the Revolution but for which generations before them struggled. If Congress shall pass a law in violation of those principles, has the Supreme Court no right to declare it unconstitutional?

Again, Mr. President, the Bill of Rights provides that—

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

That is the principle for which, as we know, the English-speaking race struggled for hundreds of years, and the men who wrote our Constitution proposed to put it where no legislature could take it away in the hour of passion. Again—

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

These are not merely expedients of Government; they are the everlasting principles on which our liberties depend and which were fought for on fields of battle and sanctified by the blood of martyrs. Are we to take them away by saying that any legislative body shall have the sole power to construe a law to determine whether it is in violation of that immortal document?

Mr. President, the genius of this Government, its true conception has been stated by a long line of jurists and statesmen from Marshall to the present time.

I know that at times, when legislative bodies or political parties have been restive under the restraints of the Constitution, there has been an agitation for an amendment to take from the Supreme Court the power to declare unconstitutional

a law in violation of American rights under the Constitution; but the good sense of the American people always has prevented it. Under our form of government, under that Constitution, the greatest protection to human liberty ever written, we have grown from a little fringe of civilization along the eastern coast to a mighty Nation. We have increased in wealth and in prosperity and in happiness under a Constitution that has protected the American people. To say that that protection shall be taken away in the hour of prejudice or passion is to endanger the foundations of the Government and to endanger the principles of human liberty.

In three Congresses, at least, has this been attempted, and in three Congresses it has failed. I hope I shall never live to see the day when any Congress will propose to the American people the destruction of the Constitution by taking from the court the power to say that a law violates its principles, because upon that construction of our Constitution and upon the courts rests the perpetuity of American Government and American institutions. May that Constitution not only be, as it has been, a shield and a protection to us in times of stress and storm but may it be a protection to us through the generations and the centuries to come.

Mr. COLT. Mr. President, I desire to say only a word.

A constitutional provision may be treated in three different ways. It may be treated as the supreme law of the land, it may be treated as on a parity with a statute, or it may be treated as a declaration of public policy.

Under our Constitution, the provisions of the Constitution are directly made the supreme law of the land, and hence they are not upon a parity with a statute, because the Constitution says "the laws of the United States which shall be made in pursuance thereof."

Under the constitutions of Great Britain, of the Scandinavian countries, of Italy, and of New Zealand, the so-called constitutional provisions are treated as on a parity with the statutes, and therefore the parliament or congress may change or amend them.

Mr. NELSON. Mr. President, will the Senator allow me one interruption?

Mr. COLT. I yield to the Senator from Minnesota.

Mr. NELSON. The only other country in the world whose system of government conforms to ours, where the supreme court can declare a law unconstitutional, is the little country of Norway. It is the freest country in Europe. It has a government as free as that of this country; and in that country the supreme court can declare an act of the Parliament unconstitutional.

Mr. COLT. I was taking Lord Bryce's statement of the countries where the so-called constitutional laws are on a parity with statutes.

France has a written constitution, and Belgium has a written constitution. The provisions of those constitutions are not laws, and never have been treated as laws. They are treated as mere declarations of public policy, to be enforced by the public opinion of the country.

That is the French and the Belgian system. Under the Constitution of the United States, however, in express language, the provisions of the Constitution are made the supreme law of the land, and the Supreme Court has jurisdiction over all cases at law and equity arising under that Constitution. Hence, our Constitution in form is differently framed from the French constitution.

Our Constitution expressly says that its provisions are the supreme law of the land. If Congress can pass any act that it pleases in violation of these provisions, then these provisions, including the Bill of Rights, are no longer laws. They are mere declarations of public policy. Laws are rules of conduct enforceable by the courts. That is the only definition of municipal law known to the Anglo-Saxon race; and if the Constitution of the United States is the supreme law of the land, it is a law which must be enforced by the only tribunal that we have for judging and enforcing, namely, the Federal courts.

What is the Supreme Court going to do in a given case? Suppose a statute were passed saying that the salaries of the justices of the Supreme Court should be only \$1,000 a year, in violation of an express provision of the Constitution. That case comes before the Supreme Court. The plaintiff relies upon the provision of the Constitution prohibiting any decrease in such salaries. The defendant relies upon the statute. The court must decide in favor of either the plaintiff or the defendant. The judges are bound by their oaths to support the Constitution of the United States. What judgment is the court going to enter? If it enters judgment for the defendant, then it must hold that the constitutional provision is on a parity with a statute, and is not the supreme law of the land; but if the

constitutional provision is the supreme law of the land, the court must decide in favor of the plaintiff.

You are striking right at the very essence and foundation of the Constitution when you say that Congress can pass any law it pleases, regardless of the supreme provisions of the Constitution. Those provisions then become no longer laws enforceable by the courts. They are either on a parity with statutes, or else they are mere declarations of public policy.

That is all I desire to say.

Mr. BROOKHART. Mr. President, I desire to reply to some of the remarkable positions taken here to-day with reference to the relative positions of the Congress and the Supreme Court under the Constitution of the United States, but because of the lateness of the hour I will not proceed at this time, but I give notice that I shall proceed, if I can be recognized, on Monday.

JAPAN—A SEQUEL TO THE WASHINGTON CONFERENCE.

Mr. ROBINSON. Mr. President, I ask unanimous consent to have printed in the Record an article by Mr. Hector C. Bywater on the subject "Japan—A Sequel to the Washington Conference."

Mr. Bywater is a British naval critic and the author of the volume "Sea Power in the Pacific." The article reflects a viewpoint which I am satisfied will prove astonishing to some Senators and interesting and important to all. I had expected to bring to the attention of the Senate some of the paragraphs in this article; but, in view of the lateness of the hour and the pressure of other business, I ask leave that the article be printed in the Record in 8-point type, and I call it to the attention of Senators.

The VICE PRESIDENT. Without objection, it is so ordered. The article is as follows:

JAPAN—A SEQUEL TO THE WASHINGTON CONFERENCE.

(By Hector C. Bywater, a British naval critic and author of *Sea Power in the Pacific*.)

[Reprinted from the *Atlantic Monthly*, February, 1923.]

I.

Sufficient time has now elapsed since the Washington conference to enable us to gauge the effect of its leading decisions on the naval position of Japan; and a study of this subject is rendered the more opportune in consequence of recent developments in the Far East which seem likely to react upon the naval policies of other powers.

The initial fact that emerges from a survey of the situation to-day is the patent failure of the conference to achieve its main purpose, namely, to check the further expansion of sea armaments in any and every shape or form. It has undoubtedly been successful in arresting the multiplication of capital ships, which are at once the most costly and—to the lay mind, at all events—the most aggressive instruments of sea power; but, through causes too notorious to need repetition, it imposed no veto on the building of other combatant types, save airplane carriers, and at least one signatory party has deemed it expedient to take full advantage of this omission. The result is that to-day, barely 12 months after the acceptance of the limitation treaty, a revival of shipbuilding competition seems inevitable if the balance of power as regulated by that treaty is to be maintained.

To state the case in a sentence: Japan, by diverting to the construction of cruisers and submarines no small part of the energy she formerly expended on capital ships, will soon be in possession of a fleet of auxiliary combatant vessels superior in some respects to that of any other power. The ratios of international strength formulated by the authors of the treaty have thus been upset, unless we assume the capital ship alone to possess any fighting value—an assumption manifestly absurd. Indeed, the relative importance of auxiliary craft has increased very considerably as the result of limiting the number of heavy ships. Therefore, when we find that Japan during the last five years has built or ordered no less than 23 light cruisers, as against a collective total of 16 for Great Britain and the United States, it would be futile to pretend that the Washington agreement has either stabilized naval strength on anything like a comprehensive basis, or relieved the naval authorities of Britain and America of all anxiety as to the future.

So far is this from being the case that at the moment of writing the United States Navy Department is understood to have in preparation a large program of auxiliary construction; and it seems only a question of time before the British Government will be compelled to take similar measures.

Japan, to do her justice, has been perfectly frank with regard to her postconference naval policy. Her intentions have been advertised to the world, even if their full significance has not been unduly stressed. She justifies her formidable program of auxiliary tonnage on two grounds: First, that it is necessary

in order to save the national shipbuilding and kindred industries from the ruin that would have overtaken them had all naval construction come to a standstill; secondly, that the additional cruisers and submarines are really needed to compensate for the reduced strength of the battle fleet.

As regards the first argument, it is no doubt true that the sudden stoppage of all shipbuilding for the Navy would have been a most serious blow, not merely to the trades directly concerned but to the whole economic system of the country.

A few facts and figures bearing on this point will not be out of place. Under the impetus of conditions set up by the World War the industries of Japan flourished amazingly for a few years, and shipbuilding in particular was developed to a remarkable extent. In 1914 the number of yards producing sea-going ships did not exceed 6; by 1918 there were 57 such establishments in operation. The slump of 1920 drove more than half these newer yards out of business, and in August of last year only 26 remained.

At the close of the war, when orders for mercantile tonnage began to fall off and at length almost entirely ceased to come in, the shipyards were forced to depend for their existence largely on admiralty contracts. From their point of view the big naval program of 1920 was a veritable godsend. Irrespective of smaller vessels, it provided for the construction within eight years of a fleet of 16 capital ships, with an average displacement of approximately 42,000 tons, and of this number at least one-half were to have been built in private yards. Under the Washington agreement no less than 14 of these vessels were canceled, including six that were already building. When this decision became known in Japan there was an outcry from the shipbuilders, who saw themselves faced with ruin, and even louder protests came from the shipyard workers, who form one of the best-organized branches of Japanese labor.

According to official statistics there were in Japan nine large private yards that were generally engaged in warship construction, employing between them 96,000 hands, and four naval dockyards, employing some 61,000 hands. Consequently the number of workers who were interested in the building of warships was 157,000, of whom, it was estimated, 50 per cent would be thrown out of employment through the canceling of battleship orders alone. Had auxiliary ships been included in the limitation scheme, the percentage of men rendered workless would have been as high as 75.

Even as it was, organized labor became dangerously restive. Mass meetings of shipyard employees were held and violent speeches made against the Government for having "betrayed" the workers. Agitators, who had previously complained most bitterly of the burden of armaments, were now foremost in opposing a reduction of that burden.

It has been hinted in some quarters that this popular clamor against the suspension of warship construction was by no means distasteful to the Government, who saw in it an excellent excuse for continuing the development of the navy on as large a scale as was possible without transgressing the letter of the treaty. Be that as it may, generous concessions were granted with a promptitude that was rather surprising in view of the tendency of officialdom in Japan to resist any form of dictation by the masses.

Less than a month after the Washington conference dispersed it was announced at Tokyo that an agreement had been come to between the Government and the shipbuilders whereby the latter would be provided with other work in lieu of the countermanded battleships, and the wholesale discharge of shipyard workers would thus be avoided. The scheme was to retain practically intact that part of the 1920 program which related to auxiliary ships and to advance the dates of laying down these vessels. For example, contracts for cruisers which it had originally been intended to begin in 1923, 1924, and 1925, respectively, were to be antedated 12 months, so that the normal building programs of 1922, 1923, and 1924 would in each case be increased to that extent. In other words, twice as many auxiliary ships were to be laid down each year as the original program had legislated for. This plan embraced destroyers, submarines, and supply ships in addition to cruisers.

In allotting the new contracts special regard was had to the claims of the shipyards which would have benefited most under the preconference battleship program, orders for new light cruisers going to those State and private yards which had been promised or were already at work upon battleships and battle cruisers. The largest cruisers will therefore be constructed at the imperial dockyards of Kure and Yokosuka and the private establishments of Kawasaki and Mitsubishi and smaller units of this type by the Sasebo Arsenal and the Uruga Dock Co. At the same time contracts for destroyers, sub-

marines, and fleet-supply ships are being distributed among the yards named and also among other establishments which suffered through the recision of the preconference program. Furthermore, extra work has been provided for the State dock-yards by assigning to them the dismantling of condemned ships.

By these measures the crisis in the shipbuilding industry has been largely overcome, all the principal yards throughout the country have a fair amount of work in hand, and it has been necessary to discharge only a comparatively small number of workers.

On the other hand, the cost of all this auxiliary tonnage will be heavy enough to wipe out a great part of the sum saved by scrapping the capital-ship program, and the net saving effected in new naval construction will consequently be much less than the taxpayers had anticipated. There are not wanting those in Japan who censure the Government for adopting this policy of "robbing Peter to pay Paul." It would, they contend, have been better to encourage the shipyards to develop other branches of activity than naval construction, such as the manufacture of locomotives and other railroad and street-car material, iron and steel work parts for bridges and structures, industrial power plants, automobiles, and the like, as has been done by European armament firms since the war.

As it is, the critics declare, the wealth of the nation is being dissipated on fighting ships, which apparently have been ordered simply to keep the shipyards in operation and not because they are absolutely essential for defense purposes.

Another and still graver objection urged against the Government's policy is that this sudden expansion of the auxiliary combatant fleet may evoke suspicion abroad as to Japan's bona fides in respect to disarmament and lead other powers to strengthen their fleets in the same way, thus ushering in a new era of naval rivalry and mutual distrust. That these apprehensions are well founded has already been made clear by the reported action of the American naval authorities in drawing up a new program to counterbalance Japan's growing strength in cruising ships and submarines.

Figures showing the actual reduction that has been effected in Japan's naval expenditure by the limitation scheme are not yet available, but the gross amount appears to be in the neighborhood of 100,000,000 yen.

In 1920 the navy budget amounted to 320,000,000 yen, or nearly twice as much as it had been three years previously; and subsequent additions, due to the passing of the "eight-eight" program, brought the gross amount to nearly 500,000,000 yen. In the following year another big increase was made, and, but for the limitation scheme, naval expenditure during the current year would have been not far short of 750,000,000 yen.

According to Tokyo press reports the naval estimates submitted in July last provided for an ordinary expenditure of 120,000,000 yen and for an extraordinary outlay of 198,000,000 yen, showing decreases of 15,000,000 and 60,000,000 yen, respectively. On October 30 it was announced that the finance department had further reduced the navy estimates in the forthcoming budget by 30,000,000 yen, making a total reduction of over 100,000,000 yen, or approximately one-seventh of the amount that would have been spent on fleet armaments this year had the "eight-eight" program remained in force.

This saving is accounted for almost entirely by the deletion of the capital ships and the abandonment of new docks and harbor works; only a very small percentage is due to reductions in personnel; and, as we have seen, the bill for auxiliary construction, so far from showing any cut, has been greatly increased. Some money will also be saved by giving up Port Arthur as a naval station and reducing the status of the Maizuru base.

As no precise figures of the cost of man-of-war construction are published in Japan the expenditure that will be incurred by virtually doubling the auxiliary building program over a term of several years can be only roughly estimated. It is known, however, that the light cruisers of the *Kuma* class, 5,500 tons, have cost nearly \$5,000,000 each; that the 7,500-ton ships of the *Yubari* class are priced at about seven and a half million dollars; and the new 10,000-ton ships, four in number, at not less than \$10,000,000 each. First-class destroyers, of which many are building and 24 projected, probably cost one and a half million dollars per boat; the medium submarine—900 tons—about the same, and the new large type—1,500 tons—\$3,000,000.

These prices are, if anything, underestimated, the cost of naval construction being abnormally high in Japan despite the relative cheapness of labor. In any case, it is sufficiently obvious that a program which embraces not less than 15 cruisers, ranging from 5,500 to 10,000 tons, 40 destroyers, and 50 submarines, besides a great many supply and depot ships, will eventually cost an enormous sum of money.

II.

It is patent to everyone that Japan is at present building more combatant tonnage than any other power, but what is not so generally appreciated is the fact that she is actually building more tonnage of this description than all the other powers combined. Once more it must be emphasized that the so-called "disarmament treaty," while certainly bringing dreadnought construction almost to a halt, has not only done nothing to limit the building of other man-of-war types, but has actually increased the number of these vessels in the case of Japan, and in all likelihood will eventually produce a corresponding expansion of the auxiliary ships of other navies.

It would occupy too much space to narrate in detail the various strategic reasons which the Japanese naval authorities have put forward, through the medium of the press, to justify the building of so many "auxiliary combatant ships"; but their argument may be summarized as follows: The battle fleet has been so reduced under the limitation agreement that it will no longer be capable of fulfilling its proper function, namely, going out to seek and engage an enemy fleet on the high seas; but must henceforth be kept in reserve as a last card, only to be played if and when the enemy's preponderance has been reduced or destroyed by tactics of attrition. Therefore to compensate for the loss of direct offensive power formerly vested in the battle fleet, Japan requires for her safety an unusually strong force of minor weapons of attack. She particularly needs an ample supply of swift ocean-going cruisers to guard her own communications and harass those of an enemy, and also to prey upon his commerce, with the ulterior purpose of diverting part of his strength from the immediate war zone.

For the same reasons it is essential to have a large fleet of ocean-going submarines which could be used alternatively for coast defense, for near and distant mine-laying expeditions, and for raiding commerce. The twofold problem confronting the Japanese Navy in war would be to maintain, as far as possible, the freedom of the ocean trade routes, and, above all, to guard communications with the Asiatic continent, which would represent a vital and indispensable source of supply for foodstuffs and raw materials. In the absence of a really effective battle fleet—effective, that is, in the sense of being able to engage the battle fleet of any potential enemy with reasonable prospects of success—these strategic tasks can best be performed by cruisers and submarines.

As regards the loss of power resulting from the limitation of the battle fleet to 10 ships this, it is argued, is far more serious than might be inferred from superficial observation. Four of the ships are battle cruisers of a design which post-war progress has made obsolete, and which could not be placed in the line of battle without exposing them to grave risk of summary destruction. This brings the battle fleet proper down to six ships, none of which could possibly be replaced if lost or disabled.

Japan is, therefore, at a grave disadvantage as compared with Britain and the United States, since their infinitely greater resources would enable either of those powers to build new capital ships very rapidly in place of any that were lost in action.

Another important factor in the revised scheme of defense is the chain of outlying naval bases with which Japan has girdled herself during the past few years; and, apropos of this subject, there can be no harm now in disclosing certain facts of which the American public has, perhaps, hitherto remained in ignorance.

In the fall of 1920 the Japanese naval authorities in cooperation with the general staff worked out a scheme for fortifying the principal islands that guard the approach to the coasts of Japan proper. This measure was intended to counteract the then impending development of Cavite and Guam as first-class bases for the American Pacific Fleet.

In September, 1920, a committee of experts, headed by Captain Mori, of the navy department, visited all the islands in question, reporting that the points where strong fortifications and naval facilities were needed most urgently were the Bonin Islands, Amami-Oshima, and Yajima in the Loochoo group. This report having been approved by the Government, steps were immediately taken to carry the proposals into effect, and the work of fortification was put in hand early in 1921.

For reasons of finance it was intended to spread the appropriations over two, if not three, years, as in view of the slow progress being made with the American works at Cavite and Guam it was thought that the completion of the Japanese insular bases might safely be prolonged till the end of 1922. But in the spring of last year (1921) it became known at Tokyo that the United States Government was meditating an appeal to the powers to join in a conference for the reduction of naval armaments, and this news decided the Japanese authorities to

speed up the completion of their island forts, with the object of putting themselves in a favorable position strategically before the conference was summoned.

Consequently from May, 1921, the work at the Bonins went on with feverish energy. A large fleet of steamers was chartered to convey thither the thousands of laborers and the vast quantities of material needed to complete the task. So great was the demand for cement that a temporary shortage of this material ensued. Throughout the summer and autumn building operations went on night and day, and during this period the Bonin Islands were under a military administration which maintained a strict surveillance over visiting foreign ships. The Japanese press was also forbidden to publish any mention of what was in progress at the islands.

By December the last of the batteries had been constructed and armed with heavy long-range guns, the barracks, munitions depots, aerodrome, and radio station had been constructed, and every navigable approach had been rendered impregnable.

Meanwhile the Washington conference had assembled, and Admiral Baron Kato, of the Japanese delegation, had taken the first opportunity to inform his American colleagues that Japan regarded the abandonment of the Philippine and Guam fortifications as the condition precedent to negotiations for the reduction of her shipbuilding program. If the United States would agree to this, Japan, on her part, was prepared to suspend her own plans for fortifying her Pacific islands and would at the same time cooperate most willingly in any practicable scheme for limiting her floating armaments.

Baron Kato did not add, however, that Japan, having been secretly engaged in fortifying her island bases for many months previously, had just completed the work, whereas scarcely any progress had been made in the development of the American stations at Cavite and Guam.

III.

Whether the American naval experts were cognizant of the facts is a moot point, but it seems scarcely credible that they would have acquiesced in the status quo proposal for Pacific bases had they known that Japan was already in possession of a thoroughly equipped naval station at the Bonins. If they did know this, one is forced to conclude that their protests against the renunciation of the right to put the western islands in an adequate state of defense were overruled by the Washington Cabinet on political grounds.

In any case Japan scored a signal triumph in securing the adoption of the status quo agreement with regard to Pacific fortifications. From her point of view it was a strategical gain of the first magnitude, which more than compensated for the reduction of her battle fleet.

That the full significance of the clause has come to be appreciated by American naval students is clear from certain outspoken criticisms which have appeared recently. The Japanese Foreign Office, betraying a sense of humor for which few would have given it credit, issued the following communiqué on February 22 last:

"The treaty on the limitation of naval armaments signed at Washington on February 6, 1922, comes into force upon its ratification by all contracting powers. With regard, however, to certain fortifications and naval bases of the British Empire, the United States, and Japan in the region of the Pacific Ocean, it is provided in Article XIX of the treaty that the status quo at the time of its signature shall be maintained. In conformity with the spirit of this provision, the Japanese Government have decided forthwith to discontinue the work on the fortifications in the Bonin Islands and Amami-Oshima, and further to maintain the existing condition of fortifications and naval bases in Formosa and the Pescadores. The necessary measures for giving effect to this decision have already been taken."

Napoleon's dictum that "war is an affair of positions" applies to the sea no less than to the land, and to a far greater degree than was the case a century ago. A fleet in those days was largely self-supporting, and could remain at sea for months at a time independent of bases, because it had no fuel problem to contend with. But the conditions to-day are vastly different. The "reach" of a modern battle fleet can be measured with almost mathematical precision, governed as it is by the number and situation of the points d'appui available. In time of war no fleet dare venture to cruise for long in waters where ample facilities for refueling do not exist. If the ships of which it is composed have an average fuel endurance of, say, 10,000 miles, that does not mean that they would be able to advance to a point 5,000 miles from home and still be sure of getting back in safety, for the maximum cruising radius of a ship is always reckoned in terms of economical speed and bears no relation to the distance that could be steamed if the engines were running

at full power. Thus a battleship able to cover 10,000 miles at a constant speed of 12 knots might be unable to travel more than 3,000 miles at her full speed of 21 knots—and in war-zone operations high-speed steaming is the rule rather than the exception. To cruise under a small head of steam in waters where enemy submarines might be encountered would be to risk destruction.

Now, the only insular base in the Pacific where the American battle fleet could be sure of finding adequate supplies of fuel is Hawaii, and we are therefore justified in assuming that 2,000 miles represents the utmost distance to which the fleet could venture to the west or south of Hawaii in time of war; and even this would leave a dangerously narrow margin of fuel for emergencies. But if America fights in the Pacific at all, she will fight for definite objects, among which will be the protection or—what is far more likely—the recovery of the Philippines, and to gain these objects she must be prepared to undertake active naval operations in the immediate zone of war, namely, the far western Pacific.

How this is to be done without local base facilities is a problem which apparently defies solution. It is certain that in their present defenseless condition, now to be stereotyped by the treaty, both the Philippines and Guam would become Japanese in the first weeks of war.

This is fully realized and freely admitted by American strategists, but it is interesting, nevertheless, to have Japanese testimony on the point. In the *Dai Nihon* of August, 1921, a thoughtful monthly review published at Tokyo, the editor, Mr. Seijiro Kawashima, discussed the probable course of hostilities between his country and the United States, and affirmed that should the outbreak of war find the main American naval forces at Panama, San Francisco, or even at Hawaii, "it will be open for Japan to take the Philippines, indeed Guam. * * * Should the worst happen, therefore, Japan would risk everything to destroy these two bases, and the ferocity with which she will fight may well be imagined." Clearly, therefore, the islands in question must be ruled out of any objective examination of the task that would confront the United States Navy in a war with Japan.

IV.

It remains, then, to consider how far offensive operations in the western Pacific would be feasible without bases. From Hawaii to the nearest Japanese coast is some 3,400 miles, making 6,800 miles for the round voyage, which would be well within the cruising capacity of modern battleships at economical speed.

But, as was emphasized above, ships steaming at low speed in an area frequented by hostile submarines would be in continual danger of attack. To be reasonably safe from submarines they must not only steam at a high rate of speed, but make frequent alterations of course, a method of progression which involves an abnormally heavy consumption of fuel in traversing a given distance.

It is therefore extremely doubtful whether the fuel endurance of the ships would suffice even for the outward journey of 3,400 miles; and if the fleet found itself close to the enemy's coast with empty bunkers and no friendly base at hand it would be exposed to certain annihilation.

Consequently, on the surface of things, it looks as if the American Navy would be physically incapable of undertaking major war operations in the western area of the Pacific; there is no visible means whereby the fatal handicap of nonexistent bases might be overcome. It is as if the United States, in pledging itself not to proceed with the fortification of its distant islands, had voluntarily surrendered not merely the power to defend these possessions, but the power to defend its interests in the Far East generally, no matter how vital they are or may become in the future.

Japan, on the other hand, has gained a strategical predominance in her adjacent waters far exceeding that which she could ever have hoped to achieve had the competition in naval armaments pursued its normal course. For good or ill, the doors of the Far East have been slammed, barred, and bolted, and the keys placed in Japanese keeping.

The British Empire, it is true, might be in a position to dispute this supremacy, thanks to its actual and potential base resources in the Pacific; but here again the factor of distance would come into play on the side of Japan by making sustained offensive operations against her coast next to impossible, even for a greatly superior British fleet pivoted on Singapore, New Guinea, or Australian harbors.

If these premises are sound they seem to warrant the conclusion that a naval war between the United States and Japan would speedily result in a stalemate, affording no opportunity for a decision by direct action from either side, since the oppos-

ing battle fleets would be unlikely to come within several thousand miles of each other. It is here, however, that the significance of the large program of minor naval construction, upon which Japan is now engaged, may be manifest.

Since history contains no record of a war having been decided wholly, or even mainly, by the destruction of maritime trade, the greatest authorities have always excluded the *guerre de course* from the domain of grand strategy, relegating it to a subsidiary place in the general scheme of belligerent operations at sea. Nevertheless there was one period of the World War when it seemed as if science had placed in Germany's hands the means of undermining what had come to be regarded as a fundamental principle of naval strategy. The submarine campaign came very near to breaking the resistance of the Allies, and did, in fact, produce that anomalous situation in which the power supreme at sea, whose warships held undisputed command of the ocean surface in nearly every part of the world, nevertheless found its marine communications menaced to a highly dangerous degree, and was able only by superhuman exertions to maintain the minimum amount of sea-borne traffic essential to the further conduct of the war.

At an earlier stage of the struggle grave loss was caused to shipping by the few German cruisers which were at large when the war began. It took a good many months to dispose of these surface corsairs, and the task was accomplished only by diverting a numerous force of swift cruisers from other war service and sending them to scour every ocean area where the raiders were likely to be met with.

Comparatively large as was the fleet of cruising ships at the disposal of the Allies, it barely sufficed to meet this demand. Had fewer ships been available the German commerce destroyers would have enjoyed a much longer lease of life, and the embarrassment they caused must have been infinitely more serious.

Among naval men a firm conviction obtains that the next great war will inevitably witness the revival of submarine attack on merchant shipping, since they believe that parchment safeguards against this practice will soon collapse under the stress of war. Assuming then that the naval methods in vogue during the World War are likely to reappear in the event of a Pacific campaign, the advantages which Japan would derive from her powerful fleet of cruisers and submarines are obvious. They would enable her, while maintaining her battle fleet intact behind its impregnable barrier of insular and coastal defenses, to wage ruthless war against her enemy's trade and communications.

When the current building program has been completed she will possess at least 25 modern cruisers of great speed and wide radius of action, together with more than 70 submarines specially designed for prolonged voyaging, the majority of them being well able to cross and recross the Pacific Ocean without needing to replenish their fuel.

v.

What resources has the United States Navy to deal with this immense fleet of potential commerce destroyers? On the basis of recent war experience it has been estimated that from four to six fast cruisers are required to circumvent the activities of one enemy surface raider; while some idea of the tremendous array of force necessary to cope with submarine attack on merchant shipping is conveyed by the fact that upward of 3,000 patrol craft of every type were kept in service by Great Britain alone, though the Germans never had more than 30 U-boats at sea simultaneously.

At the present time there are only 10 modern cruisers built or building in the United States. Even if all these ships were released from duty with the fleet in order to protect trade routes, what could they hope to achieve against 25 enemy raiders with speeds not inferior to their own?

The task would, of course, be hopeless from the start. Unless, therefore, the convoy system were adopted—and this would be at once a difficult and a precarious business under the peculiar conditions governing warfare in the area we are considering—American merchant shipping would, in all probability, be swept from the Pacific very soon after the outbreak of hostilities with Japan.

While there is not the least reason to suppose that this blow would force the United States into submission, the combined loss of trade and prestige resulting therefrom would be a serious matter. Nor would it be possible to retaliate with any marked effect; for the same dearth of cruisers that rendered the United States powerless to protect its overseas trade would debar it from molesting the communications of the enemy.

Moreover, provided that her connections with the Asiatic mainland were secure, Japan could afford to dispense for a time

with other external sources of supply, and practically the whole of her cruisers and submarines, having but little patrol duty, would be free to engage in offensive operations.

Thus the widely held idea that a war in the Pacific must speedily end in a deadlock, in which neither opponent could inflict any appreciable damage on the other, is seen to be fallacious. It would have been sound enough had the naval limitation agreement embraced all types of fighting craft; but the failure of the conference to extend the ratio system to cruiser and submarine tonnage has completely altered the situation.

In view of the foregoing considerations, it would cause no surprise to learn that American naval authorities entertain profound misgivings with regard to future developments in the Far East. That their responsibilities have been immeasurably increased by the limitation treaty is self-evident. Indeed, it might be affirmed without fear of contradiction that the treaty, by depriving the United States of all power to intervene by force of arms, has placed her interests in the Far East completely at the mercy of a foreign State, upon whose good will they must henceforth depend. The task of defending them against aggression would have been difficult enough had the naval limitation scheme never been conceived. As things are, their defense—by warlike action, at any rate—has to all appearances become impossible.

LANDS IN WYOMING.

Mr. WARREN. Mr. President, I ask unanimous consent for the present consideration of Senate bill 4146. It refers to a little local matter in my State; and as I may not be in the Chamber on Monday morning, I should like to have it considered and passed at this time.

The VICE PRESIDENT. Is there objection to the present consideration of the bill referred to by the Senator from Wyoming?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (S. 4146) granting certain lands to Natrona County, Wyo., for a public park.

The bill had been reported from the Committee on Public Lands and Surveys with an amendment to strike out all after the enacting clause and to insert:

That upon delivery to the Secretary of the Interior by the State of Wyoming of its properly executed and duly recorded deed or deeds reconveying to the United States of America in fee simple the lands in section 36, township 36 north, range 86 west of the sixth principal meridian, containing approximately 640 acres, the said State shall be authorized and permitted to select an equal number of acres from the unreserved, nonmineral, nontimbered, unappropriated public lands of the United States in said State, for the same purposes, and subject to the same conditions and limitations under which the lands so reconveyed were held.

Sec. 2. That when the title to section 36, township 36 north, range 86 west of the sixth principal meridian, shall have reverted in the United States pursuant to the foregoing provisions, the Secretary of the Interior shall cause a patent to issue conveying the said section 36, township 36 north, range 86 west, together with the north half of section 1, township 35 north, range 86 west of the sixth principal meridian, to Natrona County, Wyo., in trust for the purpose of a public park, but in said patent there shall be reserved to the United States all oil, coal, and other mineral deposits within said lands and the right to prospect for, mine, and remove the same.

Sec. 3. That the grant herein is made upon the express condition that within 30 days of the receipt of any request therefor from the Secretary of the Interior the county clerk of Natrona County, Wyo., shall submit to the Secretary of the Interior a report as to the use made of the land herein granted the county during the preceding period named in such request, showing compliance with the terms and conditions stated in this act; and that in the event of his failure to so report, or in the event of a showing in such report to the Secretary of the Interior that the terms of the grant have not been complied with, the grant shall be held to be forfeited, and the Attorney General of the United States shall institute suit in the proper court for the recovery of said lands.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill permitting the State of Wyoming to reconvey certain lands to the United States and select other lands in lieu thereof, and providing for the patenting of certain lands to Natrona County, Wyo., for public park purposes."

EUGENE FAZZI.

Mr. FRELINGHUYSEN. Mr. President, I ask unanimous consent for the immediate consideration of House bill 3461, for the relief of Eugene Fazzi, a bill now on the calendar. I do not think there will be any objection to it.

The VICE PRESIDENT. Is there objection to the consideration of the bill?

Mr. ROBINSON. Mr. President, I give notice now that in view of the unanimous-consent order entered to-day for the consideration of all unobjected bills on the calendar on Monday,

I shall hereafter object to the consideration to-day of any bill on the calendar. I shall not object to the present consideration of this bill.

Mr. McNARY. May I ask the Senator from Arkansas if he will not make an exception in the case of a bill I have here—a very important bill?

Mr. ROBINSON. I shall adhere to the announcement. An opportunity to consider all these bills will be afforded on Monday, and it is a bad practice out of the morning hour to call up for consideration bills on the calendar. There is really no necessity for taking them up by unanimous consent now, because the Senate has entered an order to proceed to the consideration of all unobjected bills during the morning hour Monday, and everyone knows an objection will take over any bill brought to the attention of the Senate. I have not objected to the request of the Senator from New Jersey because no notice had been given, but it is now very late, there are comparatively few Senators present, and I shall ask other Senators not to bring forward measures this afternoon.

The VICE PRESIDENT. Is there objection to the immediate consideration of the bill?

Mr. HARRISON. What does the bill provide?

Mr. FRELINGHUYSEN. I will explain it. The beneficiary was a deck hand on a Quartermaster Corps boat, the *Johnston*. His leg was cut off by a tow line, and the bill was introduced to compensate him.

Mr. HARRISON. I recall the facts.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which was read, as follows:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Eugene Fazzi, the sum of \$768, as compensation for the loss of a foot, on March 8, 1916, while in the discharge of his duty as a deck hand on the steamship General Joseph B. Johnston, in the service of the Quartermaster's Department, United States Army.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

PRICE OF COAL.

Mr. REED of Pennsylvania. I ask unanimous consent that there be inserted in the RECORD, in 8-point type, the following letter from John H. Jones, of Pittsburgh, addressed to the Hon. DAVID I. WALSH, junior Senator from Massachusetts.

There being no objection, the letter was ordered to be printed in the RECORD in 8-point type, as follows:

FEBRUARY 14, 1923.

HON. DAVID WALSH,

United States Senate, Washington, D. C.

DEAR SIR: After having carefully read your interview in the New York Times, we wired you as follows:

"Have carefully read your statement Sunday, February 11, New York Times. We are prepared to ship entire requirements of New England States, high grade, high volatile, bituminous steam or domestic lump steam, mine run, \$3.25 per net ton f. o. b. mines; domestic lump, passing over three-quarter to 2-inch screen, \$3.75 to \$4 net ton f. o. b. cars at mine. Quality and preparation guaranteed; subject to inspection at mines; subject further to your furnishing railroad cars and transportation. Can arrange to load solid train daily to extent of requirements of your district. Coal to be shipped from mines in Pennsylvania and West Virginia. This coal similar to that now being furnished by us to the Taunton Gas Light Co., Taunton, Mass., and others in New England States. Also have mines in Ohio and Kentucky and can ship to any customer east of the Mississippi. We will be glad to have you refer any consumer east of Mississippi in need of coal to us immediately.

"BERTHA COAL CO.

"CONSUMERS FUEL CO.

"JOHN H. JONES, President."

(Paid—Charge us.)

We stand prepared to furnish bond of \$100,000 to guarantee shipments as stated in our wire.

I am sure you will admit you have done the coal miners and operators of this country a great injustice in making such statements, as there is no shortage of bituminous coal to-day where transportation facilities are available.

Would it not be better when giving an interview to tell the public that the whole problem is one of transportation, and that the breakdown in transportation on the railroads has been brought about by a constant interference on the part of State and national agencies during the past 10 years? If these agencies will lend a helping hand to the railroads instead of continually interfering with them, there will be no shortage of railroad transportation for coal or any other commodity. What

this country wants to-day is "more business in politics and less politics in business."

I note from your statement in the Times that the city of Lynn, Mass., is short of coal. On January 23, and even as recently as yesterday, we tendered coal to our customers in that city at less than \$3 per net ton delivered at their plants, and we guaranteed delivery via rail and tidewater, but our customers advised us there was no shortage of coal at this point. Surely some one has exaggerated, or you have been badly misinformed on the conditions existing in that territory.

Our New York representative, Mr. G. N. Reed, telephoned Mr. H. K. Morrison, general manager of the Lynn Gas & Electric Co., Lynn, Mass., one of our customers, and offered to sell him coal at less than \$8 per net ton delivered at his plant, and he advised our Mr. Reed that there was no shortage of coal at Lynn, Mass. The Taunton Gas Light Co., Taunton, Mass., one of our customers, advised us to the same effect over the long-distance telephone to-day. In both instances we have cited above we were able to secure transportation via all rail, or rail and tidewater, which would enable us to deliver coal at our customers' plants.

In conclusion, I wish to say that I feel it is not your desire to make such misleading statements to the public, and for this reason I have taken the liberty to address you on this subject. If you will make an investigation you will find there is enough coal loaded in boats now lying in Boston Harbor to take care of the requirements of that territory for some time to come, and additional stock can be rushed to this point on reasonably short notice.

Very respectfully yours,

JOHN H. JONES.

STANDARDS FOR FRUIT AND VEGETABLE HAMPERS AND BASKETS.

Mr. McNARY. Mr. President, I am sure the Senator from Arkansas does not want to make a harsh exception in my case, so I ask unanimous consent that the Senate proceed to the consideration of Senate bill 4399, to fix standards for hampers, round stave baskets, and splint baskets for fruits and vegetables, and for other purposes.

Mr. ROBINSON. I shall be compelled to object to the consideration of any other bills this evening.

The VICE PRESIDENT. There is objection.

TAXICAB RATES IN THE DISTRICT OF COLUMBIA.

Mr. HARRISON. Mr. President, I had expected to ask unanimous consent for the consideration of a joint resolution to-night, but because of the lateness of the hour and the temper of the Senate I shall not do it. I introduce the joint resolution and ask to have it referred to the Committee on the District of Columbia.

It is a joint resolution calling on the Public Utilities Commission to investigate the rates being charged in other cities by the owners and operators of taxicabs and public automobiles, to report to Congress their findings, and at the same time report to the District Commissioners, and the commissioners are directed to promulgate certain orders which will insure fair and reasonable rates on the part of taxicabs in the District of Columbia, and for the enforcement of the same.

The joint resolution (S. J. Res. 283) directing the Public Utilities Commission of the District of Columbia to investigate rates charged by taxicabs and automobiles for hire was read twice by its title and referred to the Committee on the District of Columbia.

THE MERCHANT MARINE.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12817) to amend and supplement the merchant marine act, 1920, and for other purposes.

Mr. JONES of Washington. Mr. President, there are two amendments, merely changing dates, which I would like to have acted on. The first amendment is on line 17, page 6, to change "1922" to "1923."

Mr. ROBINSON. What is the effect of the amendment?

Mr. JONES of Washington. It refers to the date of this act, if it should be passed. It is referred to as the act of 1922, but 1922 is past.

Mr. ROBINSON. It may have to be changed to "1924."

The VICE PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. JONES of Washington. The next amendment is on page 8, line 3, to change "1922" to "1923."

The amendment was agreed to.

Mr. JONES of Washington. I have here an address delivered by Mayor Curley, of Boston, Mass., on the shipping bill. There are two or three phrases in it which I thought Senators might

not like, so I have cut those out. Outside of that, I would like to have the address printed in the *RECORD* in 8-point type.

Mr. HARRISON. Does not the Senator want to have it read?

Mr. JONES of Washington. I would be glad to have it read.

Mr. HARRISON. Would not the Senator like to have it read on Monday instead of this afternoon?

Mr. JONES of Washington. No.

There being no objection, the address was ordered to be printed in the *RECORD* in 8-point type, as follows:

SPEECH MADE BY MAYOR JAMES M. CURLEY BEFORE THE NEW ENGLAND TRAFFIC CLUB AT THE COPLEY PLAZA, BOSTON, FEBRUARY 13, 1923.

Gentlemen, it is of course a trite saying, and yet one that can not be too often repeated, that the transportation problems of the world are the same everywhere; and stripped of all their fine phrases are merely a question of distributing commodities and connecting communities, with speed, safety, and efficiency, to the end that commerce may flow with freedom and security, industry function profitably and uninterruptedly, work and wages be constant, agriculture prosperous, and the peoples of the earth contented and peaceful. Transportation is the link that binds the uttermost ends of the earth together, the most potent factor in the maintenance and growth of civilization, and which, by bringing men together to exchange the products of their industry and the children of their brain, fosters confidence and promotes fraternity.

In proportion as transportation is hampered on land or sea by the folly, stupidity, craft, or indifference of men, as visualized in the enactment of unwise laws and the failure to enact wise ones, the benefits it should yield are stifled and deferred. Every needless burden laid on transportation is written eventually in terms of sterility and futility in the life of this country and the daily experiences of its people.

With all its alleged defects the land transportation system of America—our continental railroad system—is admittedly the best in the world, but where the rails end on the shores of the continent and transportation on the seas begin the American people are at their weakest and worst.

It is of our ocean transportation, our merchant marine, as the essential and imperative supplement of our railroad system I wish to speak to-night, the vital importance of which to our real national life and prosperity is not fully understood even here on the margin of that ocean, out of which came the wealth that made Massachusetts great in industry and commerce, and amid whose toils and dangers were fashioned the character and courage that made the men who stamped their names on American history and carried the fame of the Commonwealth to the ends of the earth.

The American merchant marine—American ships, under the American flag, carrying American goods to alien markets and bringing home to us the commodities we need in American industry—is a national necessity and not a commercial luxury; it constitutes not only a second line of defense behind our Navy for the safeguarding of our national security and integrity, but it is the first line of protection for the maintenance of our foreign commerce which takes care of our industrial surplus and insures the constancy and prosperity of our home market.

The merchant marine—the ships—that carry a nation's commerce, dominates the markets it serves; the nation whose commerce is carried to alien markets in alien ships is at the mercy of the carrier, and by the sheer logic of that fact must sink commercially to a subordinate place.

The American merchant marine is the natural and national extension of the American railroad system; it should and must be fostered and protected by the American Government for the benefit of the Nation, since it serves intimately and vitally all the people of America. The people of the agricultural West have been misled by the clever and persistent propaganda maintained and disseminated by the alien shipping interests whose headquarters are in Washington, and have been insidiously taught that the merchant marine is merely a selfish concern of American shipowners. This alien shipping organization—rich, powerful, and sleepless—maintains a lobby in the National Capital, whose agents and spokesmen oppose every effort to foster the American merchant marine, who appear boldly and insolently in committee rooms and have been able to delude Senators and Congressmen into enlisting under foreign flags to destroy the commerce and ships of America.

It is time to rouse ourselves before America is reduced to a condition of commercial slavery by the combination of unscrupulous foreign shipping concerns. The agricultural interests of the West are seeking to remove the multitude of middle-

men and parasites that stand between the farmer who raises the food of America and the workers who buy it and consume it; and yet he has been educated by foreign propagandists to oppose his own merchant marine and pay hundreds of millions of dollars every year to alien mercantile middlemen, who carry out of the country this money that should be kept at home to keep the wheels of industry turning and the American farmer's home market prosperous.

Treachery to American integrity, American prosperity, and American national interests did not become a lost art when Benedict Arnold took service in England's forces. It is still with us under other names and in new disguises.

In order to compete with the underpaid, cheaply conditioned, and heavily subsidized merchant marines of England, Japan, and other foreign countries and enable us to keep the American flag afloat on the seven seas, America must help the American merchant marine to meet their competitors by special laws and subsidies from the Treasury. Is there anything new or strange in an appropriation called a ship subsidy? There is not. We subsidize agriculture and education; we spend vast sums for irrigation in the arid West; we subsidize reclamation works all over the country; we impose protective tariff bills to protect industry and labor; and only yesterday we appropriated \$49,000,000 to make our rivers and harbors safe for commerce and its fleets; and yet we have American Senators and Congressmen who oppose or hesitate to vote to keep alive and strong an American merchant marine to carry American commerce, market our surplus products, and keep busy and prosperous American industry and labor and maintain a profitable domestic market for American agriculturists, stock raisers, foresters, fishers, and miners.

Is there anyone who has the hardihood to say that the \$49,000,000 of the river and harbor bill are to be spent for the safety and convenience only of the foreign ships that come to our waters and seek to destroy our merchant marine? Let him answer.

The maintenance and prosperity of the American merchant marine is not a party question; it is not a Democratic or Republican policy solely; it is a national, an American question, that concerns every vital interest of this great Republic that is of prime importance not only to Massachusetts and the States on the seaboard, but is of equal interest to all the Commonwealths that make up this United States.

It is for us to let our representatives in Washington understand that there must be no wavering, no dodging, no fence climbing on this great question and that they must make up their minds now whether they will stand resolutely and without equivocation for American interests and the American merchant marine or give their services to destroy those American utilities and go over to the flags of England, Japan, and other rivals.

They stand on the banks of the political Rubicon. Across its waters lie American honor and interest; to hesitate to cross is to enlist themselves under alien flags and retire to dishonor and obscurity. They can not stand still; they must act.

ADJOURNMENT.

Mr. JONES of Washington. Pursuant to the order already made, I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 50 minutes p. m.) the Senate adjourned, the adjournment being, under the order previously entered, until Monday, February 19, 1923, at 11 o'clock a. m.

HOUSE OF REPRESENTATIVES.

SATURDAY, February 17, 1923.

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, our needs cry unto Thee; let Thy mercy and wisdom respond. Thy kingdom of love extends unto all men, and may we fear Thee less and serve Thee better. The Lord is sovereign and all things work together for good to them who love Thee. We are impressed with a solemn, yet wonderful, responsibility. In bearing it give understanding and poise to every phase of conduct and character. May our powers and privileges be held as sacred trusts for Thy glory, for the good of our country, and for the high interests of humanity. Bless all with a quiet heart in relation to the things that are and to the things that shall be hereafter. Amen.

The Journal of the proceedings of yesterday was read and approved.